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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable ZELL MILLER, a Senator from the State of Georgia.

PRAYER

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

Gracious God, You have revealed that commitment is the key to opening the floodgate for the inflow of Your Spirit. Repeatedly, You have responded to our unreserved commitment to You when faced with challenges and problems. You have provided us with clarity of thought and ingenious solutions. Unexpected blessings happen; serendipitous events occur; people respond; and the tangled mess of details is untangled. Amazed, we look back and realize that it was the moment when we gave up, You took over; when we let go, You took hold; when we rested in You, our strength was replenished.

Today, we prayerfully personalize the assurance of the psalmist: ''We commit our way to You, Lord. We also trust in You, and You will bring Your plans to pass. We rest in You, and wait patiently for You.''—Psalm 37:5,7.

Lord, help us to commit our lives, our work, this Senate, and our hopes and dreams for our beloved Nation to You. Amen.

PLEDGE OF ALLEGIANCE

The Honorable ZELL MILLER led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 12, 2002.

To the Senate:

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

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, the Chair will announce very shortly that we will begin a period of morning business. That time will extend until 10:40 a.m., with the first half of the time under the control of the majority leader or his designee, and the second half of the time under the control of the Republican leader or his designee.

At 10:40, the Senators will proceed to the House Chamber for the joint meeting with the Australian Prime Minister. The Senate will stand in recess at 10:40 until 12:30.

At 12:30, the Senate will resume consideration of the estate tax bill. We expect an amendment to be laid down at that time by Senator DORGAN. That will take approximately 2 hours, after which time we will vote on that amendment and the underlying Conrad amendment.

At approximately 3 or 3:15, Senator GRAMM is going to lay down his amendment, which is a duplicate of the House measure, to repeal the estate tax. That will be debated for 2 hours.

We hope to complete debate around 5:30 this evening and go to some other legislative matter. Therefore, we expect to complete action on the estate tax legislation today.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:40 a.m. with Senators permitted to speak therein for up to 10 minutes each.

Under the previous order, the first half of the time shall be under the control of the majority leader or his designee.

The Senator from North Carolina is recognized.

REINVENTING PROBATION AND PAROLE

Mr. EDWARDS. Mr. President, I yield myself 17 minutes.

Today I would like to speak for a few minutes about the fight against crime in America. We have made tremendous progress over the last 10 years, largely by putting more police officers on the street. But there are some troubling signs that the tide is turning against us. In 2000, the drop in the national crime rate was the smallest since 1991. And just yesterday, we learned that crime in North Carolina actually went up last year, for the first time since 1995.

So now is not the time to rest on the laurels of our victories against crime. It is time to bring the fight to the stubbornest pockets of criminality and the toughest problems in the justice system.

In my view, the number one problem in our criminal justice system today is the early release system—sometimes called probation, sometimes parole, sometimes intensive supervision. But whatever you call it, it doesn't work. It is overburdened, understaffed, inconsistent, and almost completely unsuccessful.

There are about 4½ million people on probation and parole today, and most of them will break the law again and end up back in prison. According to a Justice Department study reported in the New York Times last week, two out of three inmates released from prison in 1994 were arrested again within 3 years. And that just counts the people who got caught. People on parole make up less than 1 percent of the American population, but they account for over 35 percent of the people entering prison each year.

When criminals commit crime after crime after crime, we all suffer, and the poorest among us suffer the most. People leaving prison usually go back to the same tough neighborhoods they came from. In Winston-Salem, NC, 80 percent of the prisoners go back to 40 percent of the city. And when they return home to return to crime, it's the very last thing their struggling neighborhood needs.

We need to put an end to this. And we can put an end to it—if we follow the example of successful efforts in states and communities across the country, including a new effort in Winston-Salem. I want to name three principles culled from these successful efforts.

First, we must make it clear that parole is a simple bargain—obey the law or suffer the consequences.

Second, we need a system that has the resources to monitor the enormous number of offenders and the methods to monitor them effectively.

Finally, we need to give those offenders who are truly ready to become law-abiding citizens the chance to succeed.

Let me explain each of these principles a little further.

First and foremost, we need real punishments for people who commit real violations of probation and parole. Today we have the opposite. We have a system where at one extreme, people can violate probation or parole 10 times before anything actually happens to them. Nearly half the people in the probation system have violated the terms of probation, but only one in five gets sent back to jail for doing it. At the other extreme we have some people who miss an appointment and go back to jail for years. It just doesn't make sense.

Let me give an example. We know that many people commit crimes to feed their drug habits. Almost half of the crimes in many big cities are committed by drug users. So if we are going to cut crime, we have to get people on probation and parole off of drugs.

Now, it's true that right now, we say you have to remain drug-free while you're on probation or parole. But too often, that requirement only exists on paper. Drug tests are few and far between—maybe once a month and maybe less, so if a guy is using, he can hide it. If he does get caught, his parole officer has to negotiate with a bureaucracy to get the guy punished, so a lot of the time the officer doesn't bother. And if he does bother, the judge may choose not to impose the only punishment that's available, which may be years in jail.

The result of all this is that drug users on probation or parole know they're not likely to get caught, and so they use again and again and again. As they return to addiction, they commit more crimes.

We can do better. A rational probation and parole system would deter crime before it happens, using two basic elements. First, we would have strict supervision focused on the conduct that leads to crime. Instead of just rules against drug use, we would have frequent drug testing, like twice-a-week testing.

Second—and this is critical—we would have automatic punishments for people who break the rules. Those punishments would be swift and certain and graduated. You test positive for drugs, you get punished. You test positive a second time, you get punished more severely. Automatic, no exceptions; simple, swift punishment. Here in the District of Columbia, the system is moving in this direction, and research shows that it is helping in the fight against crime. It is time for more places to do the same.

By the way, the system ought to be the same for other violations of probation and parole besides drug abuse. Set real rules that focus on conduct connected with crime. If you break those rules, you suffer the consequences. That simple.

No. 2: We need to get probation and parole officers out of their offices and on the streets. Right now, a lot of probation and parole officers sit in their offices and wait for trouble to come to them. A typical probation officer has two 15-minute meetings with each probationer every month. That is no way to keep tabs on anybody.

What needs to happen in probation and parole today is not all that different from what needed to happen in police work 20 years ago. Twenty years ago, cops spent their time in squad cars responding to crimes. They caught some bad guys, but they did not stop crime before it happened.

Some innovative police chiefs went back to the method of policing they had learned when they first came on the force. They moved police officers out of the cars and back onto the beat, where they got to know the neighborhood; got to know the shopkeepers, the pastors, the principals; got to learn from the many good folks in every community who the handful of troublemakers were. And this kind of police work, community policing supported by the COPS program, has helped to cut crime rates across America.

It is time for the same revolution in probation and parole: Officers need to know the communities, not just the criminals. It has worked in Winston-Salem, where teams of probation and police, working with the clergy and the community, helped cut juvenile violence by 35 percent in the last year. That effort drew on a success in Boston where a team effort called Operation Nightlight helped cut youth homicides by 65 percent.

Getting probation officers back on the streets will not be easy. For one thing, it will be impossible until we cut the massive burdens on these officers. The average probation officer had over five times as many cases in the late 1990s as in the early 1970s—sometimes 200 cases. Under these conditions, even the most dedicated public servant cannot get the job done. So we have to both change the bureaucratic culture and cut the caseloads in these departments. That may mean increasing the number of officers, it may mean holding managers more accountable, it may mean increasing competition for the work. But it is something we have to do.

No. 3, We need to make sure offenders who are ready to turn their lives around have a real chance to do it.

A convict's debt to society does not end with his prison term. Men who have left prison have a responsibility to obey the law, stay off drugs, and stop victimizing their community. They have another responsibility as well—a responsibility to become productive members of our society who work hard, pay taxes, and support their children. If they are willing to fulfill those responsibilities, we have to be willing to help them and keep an eye on them while they do.

This is not about what society owes to prisoners, but we have to face the reality that we will never build enough prisons to keep people behind bars forever, and we would not want to be a society that did. Except for a tiny minority, they all come back to our communities.

This is about what society owes vulnerable communities. The last thing they need is an influx of people who are addicted to drugs and do not have jobs and do not have supervision. Far too often, that is what our prisons are churning out today.

We know that drug treatment helps prisoners get straight, but the share of prisoners receiving treatment dropped from 25 percent at the beginning of the 1990s to just 10 percent at the end. We know that prisoners who learn to read and write are less likely to commit new crimes, but we have cut prison literacy programs. We know that when somebody leaves jail, giving him a sweatsuit and sending him to the bus station in the dead of night is not the way to give him a fresh start. Too often, though, that is all we do when we release people from prison.

We need to recognize that enabling prisoners to reintegrate into our communities as lawful and productive citizens is good for everybody. We should support proven efforts that get former prisoners to beat addictions and stay at work. And we should support the efforts of community leaders, especially religious leaders, to keep a stern eye on former offenders, while also lending them a helping hand. This is something that is beginning to work in Winston-Salem thanks to the Center for Community Safety at Winston-Salem State University. It is beginning to work in places like Maryland and Ohio. It is something that needs to work across America.

That is the challenge: First, develop real and automatic punishments for real violations of probation and parole. Second, enable probation and parole officers to get out of their offices and onto the streets. Third, make sure offenders who are ready to turn their lives around have the chance to do it.

Meeting that challenge will not be easy. Every State has different probation and parole systems. Some States have differences within their systems. While the truth is that a lot of these systems are not working, some of them are. Every reform I have described is already working someplace in America today. Our job in Washington will be to spread the things that work. I know there is legislation in conference right now that will help do that in a limited way.

I believe we should think bigger, on the model of the COPS Program, a program that not only helped police departments hire over 100,000 more cops, but that also helped change the way police departments do business. We need the same kind of effort when it comes to transforming probation and parole into an effective, accountable system for reducing crime.

It may be that this administration will oppose this effort. Their current budget has already proposed gutting the COPS Program. This administration seems to think that permanent tax cuts for the very wealthiest Americans are more important than cutting crime in the very poorest communities. I see it differently.

ESTATE TAX

Mr. EDWARDS. Mr. President, I also wish to say a few words about the estate tax debate we are having right now.

With all due respect for my colleagues, I think this debate shows that a lot of people in Washington are totally out of touch with regular people back at home. I think we should step back and take stock of where we are right now.

No. 1, as all of us know, we are in the middle of fighting a war against terrorism, and we do not know when that war will end. Our young men and women are in harm's way overseas as I speak.

Here at home, we have very serious homeland security needs that the administration is struggling to meet. It is no exaggeration to say that Americans' lives depend on the success of those efforts. That is No. 1.

No. 2: We have a whole raft of serious needs in our country. I have been talking about the rising crime rate, but that is just the beginning. We have seniors who cannot pay for the medicine they need to live. We have parents who cannot afford to send their kids to college. We have children who go to school every day in crowded classrooms with leaky roofs, even as this administration cuts funding for education. That list goes on and on.

No. 3: We have a coming challenge in Social Security. We are going to have baby boomers retiring in huge numbers, and we are going to have to find a way to keep our social contract with them.

No. 1, we have a costly war against terrorism to fight abroad and at home. No. 2, we have deep problems with crime and education and health care that we are not addressing. No. 3, we have a coming crisis in Social Security.

And here is No. 4. Right now we cannot afford to address a lot of our serious needs—and in fact, our economy continues to sputter after a decade of extraordinary growth—because the country has gone from a multitrillion dollar surplus to a deficit in barely a year. That is very largely because of the tax cuts targeted to the wealthy this Congress already passed. It is a breathtaking fiscal turnaround.

With terrorism, with crime and education and health care needs, with a Social Security crisis, with massive fiscal hemorrhaging, what are we talking about here today?

We are not talking about reforming the estate tax to eliminate unfair burdens on farmers and small businesses, something I support. I very strongly believe that farmers and small businesses have to be protected from estate taxes.

We are talking about whether to blow another massive hole in the budget to pay for a tax cut that mostly benefits about 3,000 of the wealthiest families each year. In a country of over 275 million people, many of them struggling to pay their mortgages and send their kids to college, we are talking about multimillion dollar windfalls for about three thousand fortunate families.

I have only one question. Is this really why the American people send us here, to massively cut taxes on a very fortunate few while we are fighting terrorism and Social Security is in trouble and millions of middle class people are struggling? I do not think that is why people send us here.

What my colleagues are trying to do today on the estate tax is wrong from a national security perspective. It is wrong from a Social Security perspective. It is wrong from an economic perspective. And most important of all, it is wrong from a moral perspective.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I commend the Senator from North Carolina for his remarks with regard to his views on probation and the deteriorating situation with regard to how we are moving and progressing with regard to crime. I am also glad to hear the Senator from North Carolina speak about estate tax in the context of Social Security. In fact, I will be speaking in a minute with regard to the Social Security issue.

It seems inconceivable to me that the roughly 3,000 people the Senator is talking about in our Nation, those who have benefited most from the power and the success of our Nation economically and done so well, should put at jeopardy the universal program that is such an important part of retirement security for so many Americans. It does not seem right in the context of the national security, but truly it seems misplaced when one thinks about Social Security for the breadth of Americans.

So I commend the Senator for his remarks, and particularly the tying together and juxtaposition of those efforts.

SOCIAL SECURITY

Mr. CORZINE. Mr. President, as many of my colleagues know, I have over the last few weeks been speaking regularly with regard to Social Security and proposals to privatize Social Security. I think this is one of the most important debates we as the Senate and Americans need to have. It needs to be done before elections, not afterwards, because I think we need to hear from the American people about what it is they want.

To many Americans, certainly to whom I talk, and many of my constituents in the State of New Jersey—and I certainly hear it from my colleagues, and I feel strongly—these proposals that are circulating with regard to private takings of Social Security are not the mindset of most Americans. That is particularly true when people become aware that they will involve deep cuts in guaranteed benefits and that, by implication, is going to force many Americans to work longer, delay their retirement, and develop a level of insecurity in a program that was really designed to promote security among senior citizens in our Nation.

The fact is that we have seen developing an undermining of retirement security for a whole host of reasons, whether it is the diminishment of the number of Americans who are covered by defined benefit programs or the insecurity of 401(k)s which we have seen in light of some of the elements that have come out of Enron. It is very hard for me and for most of the people with

whom I have conversations to understand why we should be taking the security out of Social Security.

President Bush's Social Security Commission proposed privatization plans—there were three of them—that would cut guaranteed benefits for current workers by more than 25 percent. Those cuts would exceed 45 percent for those who would be retiring long in the future. They would apply even to those who choose not to invest in privatized accounts, and they would be even deeper for those who did not make such investments. In fact, actual cuts are likely to be deeper still. This is an important part. There is a high probability the cuts will be deeper since the Commission's plans—all three of them—are dependent on significant infusions of general revenue funds to accomplish the transition from the current system we have, the pay-as-you-go system, to the privatized system. This is arithmetic. It is not something that is political or partisan.

The only way to get from one place to the other is by taking roughly a trillion dollars from general revenues to make it supportable, if the same benefit payment schedule is going to be held to that which we have now for most future retiring American citizens.

It is hard to understand how we can talk about taking funding from general revenues in the current circumstance when we passed a debt ceiling limit yesterday of another $450 billion, and that is only expected to take us for 18 months. We have a growing deficit problem in this country. Put that together with a need to be able to provide general revenues to support this initiative towards privatization and I think we have a real problem. We have a train wreck coming. To me, that is not the direction in which we should go.

So I hope we will look at these in a serious way. The Commission's report itself talks about these 25-percent cuts and 45-percent cuts. The Social Security actuaries are the ones who present them. While they did not speak to it directly, those cuts will even be more serious and more immediate for surviving beneficiaries and disabled beneficiaries from the Social Security Program.

We are basically taking a program that has worked, has reduced the poverty level for senior citizens in America, and really putting it at great jeopardy. That is why I feel so strongly about speaking out on a repeated basis to develop this debate.

Despite the very clear proposals developed by the Bush Commission, my fear is that few Americans have any real idea what is at stake in regard to what I have described. I am afraid a lot of this is not on people's radar screens because there has not been a lot of debate about it. There has not been a lot of talk about it.

There is a point of view that this ought to be put off until after the election. I think it is important that those of us who believe in protecting Social Security as we basically know it—there will have to be some changes but basically as we know it—should be talking about the true nature of the kinds of cuts that are being talked about.

A little bit of this dialogue on the Senate floor has developed into some debate, at least inside the beltway. I would like to take it outside the beltway because that is where the real impact will lie. But there has been a continuing dialogue between the Cato Institute and myself. A minority of members of the Bush Commission have responded to some of the commentary I have tried to make. We have both exchanged long and relatively detailed treatises that are translated into explaining each other's positions, and I think that is all healthy. I think that is good. Hopefully, there will be more debate in the future.

This past weekend, a new player entered the debate, at least as reported by the Washington Times. The Commissioner of Social Security, Ms. Anne Barnhart, went on the record to criticize Democrats—at least one Democrat—for using false charges and for what the article calls incendiary rhetoric. I hope people do not presume the kind of language I am using today is incendiary. It is trying to get to a healthy debate about how Social Security should work and how it will impact seniors, survivors, and disability beneficiaries in America.

The article quotes Ms. Barnhart as stating:

> The most important message I want to send out is that benefits are not going to be affected.

Let me repeat, ''benefits are not going to be affected,'' according to Ms. Barnhart.

Ms. Barnhart then seemed to back off in the article—again, I did not see the full text of her remarks—and adopt a little less absolute approach. That is hopeful because that cannot be an absolute condition of the interpretation of the President's proposals, offering assurances only to retirees, current retirees, near-term retirees.

In any event, I was very disappointed by these reported statements which, in fact, I have tried to respond to in a number of venues, which I believe are highly inaccurate in themselves. The truth is, as I said before, President Bush's Social Security Commission proposed privatization plans that call for deep cuts in guaranteeing benefits. This is by the Social Security actuaries themselves. I do not happen to have the pages, but I can cite it in the report that the Commission put forward. As I said, these cuts apply to even those who do not choose to invest in privatized accounts.

It seems to me we ought to have this on facts at least as they are talked about. I do not want to go back through the point, but if we are to avoid these cuts, even for near-term retirees, or certainly for survivors and disability beneficiaries, we will have to have significant transfers from the General Treasury to be able to sustain Social Security benefits even for those groups. I think that is going to be an increasing challenge for this body, for public policymakers in general, because we are running deficits.

Arguing that benefits are not going to be affected seems precisely the kind of false charge for which Ms. Barnhart reportedly was criticizing Democrats.

This is a debate we need to have. We need to have it on substance. We need to make it balanced, thoughtful, very public. I will work to that end. There is not a more important issue—perhaps prescription drugs, as the Presiding Officer is articulately making the case to the American people. This gets at retirement security, things that make a difference in real people's lives. I was in the chair several weeks ago when the Presiding Officer made the case that he went to a diner and heard what was on people's minds. Prescription drugs are on people's minds, and making sure that Social Security is there as people have expected, as they have paid into the system. It is right in the gut to most Americans, at least those diners I go to in New Jersey. This is something we have to be attentive to, we need to debate, we need to come to a conclusion, and get on with the process.

I am hopeful Ms. Barnhart was misquoted in the Washington Times. I have been misquoted once in a while, as I am sure all Members have. I do not think engaging in incendiary commentary is helpful, nor do I think many of my colleagues do. I hope she will write to the editor of the paper and clear up the matter. I would love to get into a very serious debate about the substance of how we will finance Social Security as we go forward. That is an important element of our necessary debate to get to long-term solutions that make a difference in people's lives.

I hope she will review the facts involved in the President's commission's report when we are talking about these deep cuts in guaranteed benefits. They are there in black and white.

I ask unanimous consent a copy of the Washington Times article and my response to Ms. Barnhart be printed in the RECORD.

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

[From the Washington Times, June 8, 2002]

SOCIAL SECURITY REFORM DEFENDED

(By Donald Lambro)

The head of the Social Security Administration criticized Democrats yesterday for using false charges and ''incendiary rhetoric'' to stir up political fears over President Bush's plan to reform the retirement system.

Jo Anne Barnhart said there is no truth to Democratic claims that Mr. Bush's plan will cut retiree benefits or that the administration was robbing the trust fund.

''I think the fear factor is really unfortunate. It is important that Social Security beneficiaries be reassured,'' said Mrs.

Barnhart told The Washington Times yesterday—her first interview since Mr. Bush selected her last summer to run the nation's largest retirement program.

''The use of highly charged, incendiary rhetoric doesn't accomplish this,'' she said.

Mrs. Barnhart spoke approvingly of Mr. Bush's plan, saying it's important to restore faith in the program and give people more control over their retirement funds.

''The most important message that I want to send out is that benefits are not going to be affected. Regardless of what proposal you look at in terms of reform, I want to reassure retirees and near-retirees that they will not have a reduction in benefits,'' she said.

Democratic leaders have been escalating their attacks on Mr. Bush's Social Security reform plan in recent weeks, believing that the issue will motivate older Americans to vote in larger numbers against Republican congressional candidates this fall.

''It is indisputable that the Bush Social Security Commission's privatization proposals include drastic cuts in guaranteed Social Security benefits,'' said Sen. Jon Corzine, New Jersey Democrat, who has been leading the attacks in the Senate.

Until yesterday, the White House had not directly struck back at its critics, and Mrs. Barnhart's surprisingly strong remarks signaled that the administration now believes it should respond to the Democrats' mounting political offensive.

Mrs. Barnhart declined to compare the Social Security benefits with what workers would get under Mr. Bush's plan to let workers voluntarily invest part of their payroll taxes in stock and bond mutual funds.

''These are highly technical issues that our actuarial analysts can answer,'' she said.

But when asked about questions of financial risk and safety that Democrats are raising about Mr. Bush's investment plan, she revealed that her own federal pension was fully invested in stocks.

''I'm a federal employee. I participate in the Thrift Savings Plan. I went into the stock fund,'' she said. The government's popular Thrift Savings Plan lets federal employees invest their retirement funds in stock and bond funds.

Such stock funds are ''widely diversified to lower risks'' and government bond funds posed no risk, she said. The president's commission on Social Security, which proposed three different plans to implement Mr. Bush's reforms, examined the Thrift Savings Plan as a possible model to follow.

Mrs. Barnhart said that she thinks that ''we can look at the Thrift Savings Plan'' as the basis for a larger retirement for the general public.

''I don't think there is any question that people, particularly younger people, would have more control over their investments in the future,'' she said of the administration's proposed reforms.

U.S. SENATE,
Washington, DC, June 12, 2002.

Hon. JO ANNE BARNHART,
Commissioner, Social Security Administration, Baltimore, MD.

DEAR COMMISSIONER BARNHART: I am writing with respect to statements attributed to you in an article published in the Washington Times on June 8 on the topic of Social Security.

According to the article, you ''criticized Democrats for using false charges and 'incendiary rhetoric' to stir up political fears over President Bush's plan to reform the retirement system.'' The article quoted you as saying. ''The most important message that I want to send out is that benefits are not going to be affected.''

I am very concerned about this last statement, which is simply not accurate. President Bush's Social Security Commission proposed privatization plans that call for deep cuts in guaranteed benefits. The Social Security Administration's own actuaries have calculated that the cut for many current workers would exceed 25 percent, and cuts would exceed 45 percent in the future (see page 75 of the actuaries memo on the report, dated January 31, 2002). These cuts would apply even to those who choose not to invest in privatized accounts. The cuts would be even deeper for those who do make such investments.

I recognzie that, after stating simply that ''benefits are not going to be affected'' you seemed to back off and provide assurances only to retirees and near-retirees. However, the Commission's plan relies on significant infusions of general revenues none of which have been provided for in the President's budget. If and when these revenues fail to materialize, retiree benefits clearly could be at risk. While, in the short-term, I hope that Congress somehow would find the resources to protect current retirees, over time the threat of further benefit cuts for retirees seems very real. In addition, based on the text of the Commission's report describing Model 1, it appears that some near-retirees would have their guaranteed benefits reduced if they participate in the program of privatized accounts.

I understand that reasonable people can disagree about the merits of privatization and believe it is importannt that the debate on Social Security's future be conducted without excessive rhetoric on either side. I have tried not to engage in attack language in the discussion so far, and I am hopeful that other parties will adopt a similar approach. The future of Social Security is too important to be decided by misleading claims or partisan politics.

Sincerely,

JON CORZINE.

Mr. CORZINE. I hope we continue this dialog in a thoughtful, balanced matter.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BAYH). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. CRAIG. Mr. President, I believe we are in morning business, is that not correct?

The PRESIDING OFFICER. That is correct.

HOMELAND SECURITY

Mr. CRAIG. Mr. President, this morning I want to speak to a couple of issues that I think are important to this body and certainly to the citizens of our country. First and foremost, I want to speak of a meeting that occurred at the White House yesterday that I had the good fortune to be a part of, a meeting of the President and the joint leadership, Democrat and Republican, of the House and Senate. We met with President Bush, the Vice President, and Governor Ridge to talk about the President's decision to create a new Cabinet-level Department of Homeland Security and his decision to send to the Congress a proposal that would allow us to work with him in the shaping of legislation to ultimately create that agency.

I saw the current Presiding Officer on television the other night speaking to this issue. I was pleased that he, too, like I, agree that a time has come in our country that we need to recognize the extraordinary global terrorism threat that has been brought to our doorstep and to the doorstep of most American citizens, and the need to recognize that the mechanisms of our Government to combat this threat have in part failed—or certainly the mechanisms are not in tune with the current threat in a way that they can effectively connect all of the dots to draw the necessary conclusions of the magnitude of the threat by those who bring it to our doorstep.

As a result of that, the President, in a very forward-looking way, having assumed the leadership of this great country, has brought to us an opportunity to work with him to make a decision that I think will be historic for our country, a decision to create a new department that I believe, when completed and effectively run, will make all Americans safer. It will give our country, through this department, the ability to protect our borders, to collate and analyze intelligence and information about ongoing threats, to expedite decisions at all government levels, and to take immediate action when the conclusion of the event or the risk that might occur warrants it.

The new department eliminates what has become a patchwork of agencies and lines of authority that were designed for a threat of an era ago. What worked in cold war and post-cold-war environments does not fit, or is apparently not fitting the current threat that this Nation recognizes.

This department, in my opinion, is not a step toward big government. Big government is when the Federal authorities needlessly take over functions better left to State and local governments.

The Presiding Officer is a former Governor. He understands so well the importance of State government and State law enforcement authorities. What we want to have happen is an improvement of those relationships as they relate to the threat.

My Governor, Dirk Kempthorne of Idaho, was once a U.S. Senator. As a Senator, he had greater clearance than he now has as a Governor. In other words, he had a right to know, under the law and by his title, more about the security risk in our country than he does as a Governor today. That is wrong. Governors in the role they must play as law enforcement officers within their States and directors of law enforcement communities within their States have to know. I use as an example the opportunity to create a seamless relationship between Federal intelligence and Federal law enforcement and State law enforcement. In my

opinion, this is not the creation of a bigger government. This is called getting smart and getting it right at a time when our country demands it.

This proposal, however, which I think the President offers is the direct opposite of what some might call big government. Our Founding Fathers said it clearly when they stated within the Constitution the responsibility of the Federal Government to provide for the security of the citizens of this country. That was the foremost charge of a Federal Government's responsibility under the Constitution.

I think our President has recognized that oh so well ever since 9–11 and now brings to us an opportunity and a challenge to create this new department that, in my opinion, will not bloat government. Personnel and offices will remain relatively at current levels. In fact, due to consolidation, it is possible we might even see over time a slight reduction. The challenge is now ourselves. The challenge is to set aside that which is mine or that which is yours—it is called turf here on Capitol Hill—and to recognize that this is a time to act and to act promptly.

I was extremely pleased to see the bipartisan character and feeling of the meeting at the White House yesterday with TOM DASCHLE, TRENT LOTT, DICK GEPHARDT, and DENNY HASTERT—all of these leaders talking in a bipartisan mode about a timeline of importance. I think we all recognize that Leader GEPHARDT said: Why not 9–11–02? Why not on the anniversary of this tragic time in America when we began to rethink and realign our efforts that we should make available to the American people a new department, a new government, a new shaping of government. Well, I hope we can do 9–11–02. But if we are to do it, it means we have to burn the midnight oil a bit. It clearly means we have to roll up our sleeves and go to work. And it also means that the Senate and the House operate differently than they are historically at least expected to operate. We have done it in the past, and we can do it again. And we should do it now.

I hope Leader DASCHLE and Leader LOTT, in recognizing this, can bring the Senate together in a way unprecedented at least in modern times to get the job done—to get it done in a quick but thorough fashion, to do the necessary and proper reviews that bring about for this country a new shaping of government that we hope in the end will make us a safer, more secure place, and in that process not infringe upon or in any way lessen the rights and the freedoms of the citizens of this great country.

NUCLEAR WASTE POLICY

Mr. CRAIG. Mr. President, I want to speak about a need of this Senate to act and act soon. I am speaking about a provision within the Nuclear Waste Policy Act of 1982 that required a procedure by which this country would ultimately step forward in determining a permanent storage site for high-level nuclear waste. It is known here as Yucca Mountain in the State of Nevada. It has been a high-profile issue, one that has been given a great deal of debate over the last good number of years, but one that has come again to the floor of the Senate in which we must make a decision to make one step forward in a review and licensing process to determine whether the site of Yucca Mountain in the State of Nevada is capable of handling and effectively storing for 10,000 years the high-level nuclear waste of this country.

In the Nuclear Waste Policy Act of 1982, we established what is known as an expedited procedure for consideration of the resolution approving the President's selection of the nuclear waste site. Now the President has selected, because the NEPA process through the Department of Energy has determined that it is now time to go to the Nuclear Regulatory Commission for their review and their determination as to whether the site ought to be licensed. So the time is at hand, as was seen in 1982 under this act.

The expedited procedure under the Nuclear Waste Policy Act, as amended, specifically provides that once an approval resolution is on the calendar—and that means the authorizing committee has acted and sent it forward, as it has—the law says very specifically that any Senator may move to proceed to its consideration. And the motion to proceed is privileged and nondebatable.

Under current practices, measures normally reach this floor through agreement to a unanimous consent request by the majority leader. It is critically important for the operation and the procedure of this Senate on a daily basis that the majority leader of the Senate set the agenda. But there is always the provision, because we are all equal in the Senate under the Constitution, that sometimes the majority leader may not set the agenda the way the majority of the Senate would want it set. And, of course, that can be objected to and a vote to proceed.

But what we are talking about here is recognition of a special procedure—unprecedented, or at least certainly one that does not establish the precedent of the normal decorum of the Senate. If unanimous consent cannot be obtained, as we know now, the Senate has taken care of that procedure by simply allowing the rule or the decision to be tested.

The Nuclear Waste Policy Act provides special statutory authority to make exceptions to the contemporary practice to which I have just spoken.

Let me say that again. The Nuclear Waste Policy Act provides a special statutory authority to make exception to contemporary practice. In other words, it is not to establish a precedent. It is not to override the majority leader, as some would like to have it thought today and are certainly arguing. It is in fact the law of the country and not the rules of the Senate to which we are speaking. It is one of four statutes adopted since the 100th Congress that expressly allow any Senator to offer a motion to proceed to an item of approval or disapproval. Those statutes are not redundant to Senate rules and do not upset contemporary practice regarding motions to proceed to other legislation on the Senate calendar.

Exercising a Senator's right under the statutory authority in the Nuclear Waste Policy Act should be considered extraordinary, and not a general assault on the normal prerogatives of the majority leader.

When the Senate passed the Nuclear Waste Policy Act, it envisioned a circumstance in which a leader might be unwilling to propound a motion to proceed. It appears that may be what is happening on the floor of the Senate. Thus, the law expressly permits someone else to act so Congress can work its will before a statutory deadline passes.

Finally, let me say this: If a leader will not propound a motion to proceed, he cannot contend his leadership prerogatives will be violated if someone else moves the procedure. You can't contend that you have been violated if in fact that is the law of the land. And that is the law of the land.

The very procedure I have outlined is expressly stated in the Nuclear Waste Policy Act. Agreement with such a position gives the leader absolute and unilateral authority to veto power over consideration of any legislation, if in fact that can be argued. But at times, when TRENT LOTT was majority leader of the Senate, that was challenged, and a majority of the Senate stayed with the leader when it dealt with contemporary legislation of the moment and the setting of the calendar outside the statutes of the Federal Government within the rules of the Senate.

I wanted to speak about that briefly this morning because I know that is now being talked about amongst us Senators as we ultimately come to a time, prior to late July, when we must address this issue for the sake of the country, for the sake of ratepayers, certainly for the sake of the future of the energy sources of our country, and especially for nuclear-generated energy.

It is important to understand, and I will be to the Chamber speaking out about this issue more as we develop it. I would hope that the majority leader or the authorizing committee chairman who brought the resolution forward would act as they should under the rules to establish a time and a date certain when this Senate can debate and act responsibly on this most critical national environmental issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I compliment the Senator from Idaho for

making this last point. He is absolutely right. Under the law that we passed, we have to consider what we are going to do with nuclear waste before the middle of July. And there is only one procedure under which it can be done. If the majority leader does not bring it up, then the statute provides anybody else can. That is what will happen.

The Senator from Idaho is exactly correct. I compliment him on his leadership on this issue.

PERMANENT REPEAL OF THE DEATH TAX

Mr. KYL. Mr. President, I rise this morning to talk about the issue that will be before us as soon as we resume business, and that is the permanent repeal of the death tax. This Senate has already repealed the death tax. The President has already signed it into law. But most Americans are now realizing there was a catch.

Under the special procedures that the Senate operates, that bill came before the Senate with a 10-year sunset. So all we could do was pass a law that was in effect for 10 years and in the 11th year, we are right back to where we were in the year 2001, meaning that while we repealed the death tax, it is back in the year 2010. That is not something we intended when we voted to repeal it.

I don't think anybody could argue that they intended only that it be repealed for 1 year. That is extraordinarily bad tax policy and a cruel hoax on the American people, who thought we were repealing it permanently. Obviously, we need to repeal it permanently, and that is what the Gramm-Kyl amendment will do.

I want to speak this morning about why this is so important, to bring it down to simple, personal terms.

In the Mansfield Room, just a few feet from the Senate Chamber in which we are right now, Mr. President, there is a small businessman, the owner of a lumber company. Actually, his dad owns the lumber company. He is helping to run it now. His name is Brad Eiffert, from Columbia, MO. And it is the Boone County Lumber Company.

His problem is this. When his father dies, the U.S. Government says: We want half of the value of everything you own with this lumber company. Let's explore what that means. They have been paying income tax on their corporate income. They have been paying individual income tax on the salary they take out of the company. They pay the payroll tax. They pay the Social Security tax. They generate a lot of taxes for Boone County and for the State of Missouri. And they have created 30 jobs.

This has been a successful, now second-generation company. The children of the father who owns the company now pay $58,000 a year in insurance premiums so that when their father dies, they will be able to inherit the business and have the money to run the business. Think of an insurance premium of $58,000 a year.

What does the Government do right now? The policy before we repealed the death tax was, the day he dies, his estate—that is to say, the people who would inherit the money the father owns and would inherit the business—has to pay half of that to Uncle Sam—half, 50 percent.

There is an exemption of a few hundred thousand dollars. I don't know how much this lumber company is worth, but let's say it is worth $5 million, just to pick a figure. I could be way off. About $4.5 million is now subject to the estate tax when the father dies.

So how do people pay the estate tax? This is the perversity of this tax. This lumber company has an inventory of lumber. They buy lumber from different companies that chop down trees and make it for them. So they have a bunch of warehouses full of lumber. And they have trucks that deliver the lumber. They have forklifts that enable them to move that lumber around. They have a little office. They have some other things; I am sure they sell hammers and nails and things such as that.

When this business is valued at, let's say, $5 million, they don't have a drawer that says: If you need $2.5 million to pay Uncle Sam, here is $2.5 million. No business has that. What they have is a value in the inventory, the lumber, the trucks, the forklifts, the warehouses, and so on. That is what is worth $5 million.

So, in effect, Uncle Sam wants to come in and say: We want half of that value. If you have 10 forklifts, we want 5 of them. If you have 10 lumber trucks, we want 5 of them. We want half of the inventory. In effect, just put it on a railroad car and send it to Washington. We want half of your warehouses.

There isn't money to pay Uncle Sam. We are talking about the value of the business. Remember, they have paid their income taxes. We are now talking about the value of the estate. It is called an estate tax.

What is the estate? The estate is the Boone County Lumber Company, with its forklifts and trucks and lumber. If that is worth $5 million, Uncle Sam says: I want half of it. How do you keep the business going by sending Uncle Sam half of the forklifts and half the trucks and half the lumber? That is obviously not what happens. You have to sell it to generate cash to write a check to Uncle Sam. You cannot just sell half your business. You end up selling the whole business.

Somebody said maybe they could get a loan to pay the taxes. Wrong. Anybody who knows anything about small business knows two things: One, you have financed the purchase of your equipment. You have financed the purchase of the land. Who buys a house for cash? You go get a home mortgage loan.

Well, businesses are the same. They don't pay cash for the land and the buildings; they get a loan from the bank so they can buy the property. They get a loan from the bank to buy their trucks, just as you buy a car on time, and you pay a Ford or GMC creditor or whoever it might be. The same with lumber, you get a bank loan to buy the lumber. Then you sell it and pay back the bank.

So these small businesses are highly leveraged in the sense they have already gotten all the credit they could get out of the bank. They can't go to the bank and borrow $2.5 million to pay the estate tax.

There is another reason, too, and that is there is an exemption. Today you get a $1 million exemption—and some people are proposing the exemption be more than that—but you can't qualify for the exemption.

The National Federation of Independent Businesses, which knows a lot about this because it represents a lot of these businesses, has testified, as have other experts, before the House Ways and Means Committee, which considered this, that the provision under which you can theoretically get an exemption is way too complicated and does not work.

The ABA, as a matter of fact—the American Bar Association—has advised its lawyers of being very careful of trying to help anybody to qualify for this exemption because they likely will be committing malpractice. So it does not work either.

So the bottom line is, hundreds of thousands of small businesses around this country face what Brad Eiffert faces. When his dad dies and Uncle Sam says pay us half of the value of everything in this business, he does not have the cash. He is not going to be able to borrow the cash. He has one choice: Sell the Boone County Lumber Company.

I will give you another company. The idea of the death tax was to prevent the accumulation of wealth. I had a good friend in Arizona. His name was Jerry Witsosky. He died. He created a printing company, Imperial Lithograph. He started with one employee, himself. He gradually built it up. He had about 150 employees, somewhere in that neighborhood when he died. It was a very successful business in Phoenix.

He contributed more money to charities in Phoenix than anybody I have ever known—a wonderful man. He died. His family could not pay half the value of that printing company to Uncle Sam, and they eventually had to sell the business.

Who did they sell it to? They sold it to a great big corporation. So much for preventing the accumulation of wealth. Here you had a family business, a going concern, a wonderful contributor to the community, and it had to be sold to a big corporation just to generate the cash to pay the estate tax.

Is this right? No. It is bad tax policy. It is unfair. It destroys all of the incentive. We talk about the American

dream: save, invest, and hope that your kids can have a better opportunity than you had. That is the American dream. And the estate tax, or the death tax, just cuts that right to the quick and says: We want half of everything you earned during your lifetime. And, by the way, if you have to sell your business to pay us the money, that is tough. We want to spend it back in Washington.

This is a perverse tax policy. The good thing about the version of the repeal that Senator GRAMM and I have proposed is that it does not let anybody off the hook in terms of paying taxes to Uncle Sam. They already paid the taxes on the income. What we say is when Brad Eiffert inherits his father's business, the Boone County Lumber Company, he does not pay a tax when his dad dies—that is perverse—but if he ever sells the Boone County Lumber Company, then he pays a capital gains tax, and he pays it based on what his dad paid for the original company.

So Uncle Sam is going to get the full take. We will get all the money we need here to spend in Washington, but it is when he decides to sell the business; that is the taxable event. Death should not be a taxable event.

So I hope my colleagues will join Senator GRAMM and me later today when we have an opportunity to finally repeal this perverse tax and replace it with a capital gains tax. We are not letting anybody off the hook. We are substituting one tax for the other, but we are substituting a tax that is fair because it says if you make a decision, knowing the tax consequences, to sell the asset, you pay Uncle Sam. If you don't, you don't. But that is your decision. It replaces a tax on the event of death which is more perverse and unfair.

The U.S. Government should not have that as a policy for the people of the United States of America. I urge my colleagues to reject the alternatives. There is only one real repeal, and that is the Gramm-Kyl repeal of the death tax.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

JOINT MEETING OF THE TWO HOUSES—ADDRESS BY THE PRIME MINISTER OF AUSTRALIA

The PRESIDING OFFICER. Pursuant to the order of the Senate, the following Senators are appointed to escort the Prime Minister of Australia into the House Chamber: The Senator from South Dakota (Mr. DASCHLE), the Senator from Florida (Mr. NELSON), the Senator from Mississippi (Mr. LOTT), the Senator from Oklahoma (Mr. NICKLES), the Senator from Texas (Mrs. HUTCHISON), the Senator from Idaho (Mr. CRAIG), and the Senator from Indiana (Mr. LUGAR).

Without objection, in accordance with the previous notice, the Senate will now stand in recess for the purpose of attending a joint meeting with the House of Representatives to hear the very distinguished Prime Minister of Australia, John Howard.

Thereupon, the Senate, at 10:46 a.m., took a recess and the Senate, preceded by its Secretary, Jeri Thomson, proceeded to the Hall of the House of Representatives to hear an address delivered by the Honorable John Howard, Prime Minister of Australia.

(For the address delivered by the Prime Minister of Australia, see today's proceedings of the House of Representatives.)

At 12:30 p.m., the Senate, having returned to its Chamber, reassembled and was called to order by the Presiding Officer (Mrs. CLINTON).

DEATH TAX ELIMINATION ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 8, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 8) to amend the Internal Revenue Code of 1986 to phaseout the estate gift taxes over a 10-year period, and for other purposes.

Pending:

Conrad amendment No. 3831, in the nature of a substitute.

AMENDMENT NO. 3831

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, what is the issue before the Senate?

The PRESIDING OFFICER. The Conrad amendment No. 3831.

AMENDMENT NO. 3832 TO AMENDMENT NO. 3831

Mr. REID. Madam President, on behalf of Senator DORGAN, I send an amendment to the desk.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. DORGAN, for himself, Mr. DURBIN, Mrs. CARNAHAN, and Mr. CORZINE, proposes an amendment numbered 3832 to amendment No. 3831.

Mr. REID. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To amend the Internal Revenue Code of 1986 to make permanent the estate tax in effect on December 31, 2009, to increase the exclusion amount to $4,000,000 in 2009, and to provide a full family-owned business interest deduction in 2003)

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

SECTION 1. ESTATE TAX WITH FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.

(a) ELIMINATION OF ESTATE TAX REPEAL.—

(1) IN GENERAL.—Subtitle A of title V, sections 511(d), 511(e), and 521(b)(2), and subtitle E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 are repealed.

(2) CONFORMING AMENDMENTS.—

(A) The table contained in section 2001(c)(2)(B) of the Internal Revenue Code of 1986 is amended by striking ''2007, 2008, and 2009'' and inserting ''2007 and thereafter''.

(B) The table contained in section 2010(c) of such Code is amended by striking ''2009'' and inserting ''2009 and thereafter''.

(C) Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended—

(i) by striking ''this Act'' and all that follows through ''2010.'' in subsection (a) and inserting ''this Act (other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.'', and

(ii) by striking '', estates, gifts, and transfers'' in subsection (b).

(b) INCREASE IN EXCLUSION AMOUNT.—The table contained in section 2010(c) of the Internal Revenue Code of 1986 (relating to applicable credit amount), as amended by subsection (a)(2)(B), is amended by striking ''$3,500,000'' and inserting ''$4,000,000''.

(c) FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.—

(1) IN GENERAL.—Section 2057(a) (relating to deduction for family-owned business interests) is amended—

(A) by striking paragraphs (2) and (3), and

(B) by striking ''GENERAL RULE.—'' and all that follows through ''For purposes'' and inserting ''ALLOWANCE OF DEDUCTION.—For purposes''.

(2) PERMANENT DEDUCTION.—Section 2057 is amended by striking subsection (j).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after December 31, 2002.

The PRESIDING OFFICER. Who yields time? If no one yields time, time shall be charged equally to both sides.

Mr. REID. Madam President, I suggest the absence of a quorum and I ask unanimous consent that time be charged equally against both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAMM. 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. GRAMM. Madam President, let me remind my colleagues where we are and what we are doing. Last year, we adopted a repeal of the death tax. Under that repeal, we phased up the exemption. We will soon start phasing down the rates, and in 2010 we will actually repeal the death tax. But because of a quirk in the rules of the Senate and the budget process, this death tax snaps back into full force in 2011.

Members of the Senate voted to repeal the death tax. They proclaimed they were repealing the death tax. We are here today to really finish that work by simply taking the provisions of law that are in place and in 2010—a

year when according to the Congressional Budget Office March estimate we will have a surplus of over $300 billion—we would eliminate the death tax forever rather than having the death tax come back from the grave to prey on working families. That is the provision we are here to debate.

We have had offered an amendment which is really not about protecting family farmers. It is not about protecting small businesses. It is about protecting politicians. It is an amendment that makes a nominal change in existing law that still allows the death tax to continue but it claims to give an unlimited exemption to small businesses and to small farmers under a section of law called section 2057. This is a provision that was proposed last year by the opponents of the death tax repeal as an alternative when we voted on repealing the death tax. It is in law today but at a lower level of protection.

The point I want to make is, section 2057—which this amendment claims would be expanded to shelter more value in small business and family farms—and all the other special exemptions put together have been used by only 33 taxpayers in the time they have been in effect. In other words, these provisions that supposedly shelter and give small business and family farms special protection are so convoluted, so burdensome, so inefficient that only 33 taxpayers in the years since these provisions have been in effect have found it possible to use this section 2057 to gain the promised relief.

So the reality is, if this amendment were adopted, it would provide assistance to 33 known taxpayers but it would provide a figleaf to 40 Senators by allowing them to vote against the repeal of the death tax once and for all.

My colleague and cosponsor on this bill is a distinguished attorney, and I want to give him an opportunity to talk about this provision in some detail, but let me basically sum up the arguments we have heard thus far and that we are certainly going to hear today.

The first argument we are going to hear is that repealing the death tax is going to cost money, is going to drive up the deficit, and is going to increase debt. I remind my colleagues that under the latest estimates we have, the death tax collects less than 1 percent of the revenues that we collect in the Federal Government.

Yesterday, I made reference to two studies, one by our own Joint Economic Committee titled ''The Economics of the Estate Tax,'' and the other by the Institute for Policy Innovation titled ''The Case For Burying the Estate Tax.'' Both of these studies make a very strong case that by forcing small business and family farmers who are trying to protect their families from the death tax to pay these big insurance policies, to hire all these lawyers, to hire all these accountants, and by forcing people to sell off businesses and farms prematurely to try to plan for this tax, we have lowered the efficiency of the economy. The study by our Joint Economic Committee concludes that the level of capital in America is $50 billion lower than it would be without the death tax. The study by the Institute for Policy Innovation concludes that by disrupting economic activity and lowering efficiency, this tax actually collects no net new revenue.

Our colleagues say, and we are going to hear it throughout the day in the debate, that, well, we would make it permanent but we cannot afford it; we cannot afford to make it permanent.

I remind my colleagues that the amendment I will offer, which is the permanent repeal amendment that passed the House, does not go into effect until 2010. As I noted earlier, in 2010 we are projected to have a surplus of some $300 billion. What those who oppose permanent repeal of the death tax are really saying is they want to spend that money.

There is an interesting paradox here. Despite all the talk we had yesterday and will likely hear again today that we simply cannot afford to make the repeal of the death tax permanent and we have to force families to sell off the family business and sell off the family farm and give government 55 cents out of every dollar people have accumulated in their working lifetime in aftertax dollars, that we have to do that because we need the money, I find it interesting that in five different instances over the last 9 months where this Senate has voted to spend more money than we would lose in revenues next year if we made the repeal of the death tax permanent. We spent $14 billion on nonemergency items in the emergency supplemental appropriation that the President did not ask for and that over the next 2 years is some four times as much as repealing the death tax would save families if they got to keep the money.

The farm bill next year costs seven times as much as letting people keep the family farm or keep their small business.

The energy bill was more expensive than the cost of letting people keep their family farms.

The trade bill added new entitlements that cost more over the next 3 years than letting people keep what they have accumulated over a lifetime.

Railroad retirement costs 15 times as much next year.

The stimulus package that was adopted, the parts that were not asked for by the President, cost more than making the repeal of the death tax permanent next year.

Finally, the budget reported on a straight party line vote out of the Budget Committee adds new spending—not requested by the President, not defense related, not related to our security needs in fighting terrorism—of $105.8 billion.

In short, on five different occasions in the last 9 months we have voted on the floor of the Senate or in the Budget Committee to add new spending that, when it is added up, is some 15 times more expensive than repealing the death tax permanently, and yet our colleagues who voted for each and every one of these increases in spending now say, well, we could afford to spend all of this money but we cannot afford to stop forcing families to sell off their farms and their businesses and the accumulated value of the life work of their parents.

That represents misplaced priorities. We have colleagues who could name 100 taxes that ought to be increased, who could name 40 tax reductions that should be taken back, but they cannot name a single Government program that we could live without or we could reduce.

At its root, this issue boils down to one simple choice. We will hear many arguments today, but it comes down to a simple choice. The people who do not want to make the repeal of the death tax permanent believe it is worth forcing people, at the death of their parents, to sell off their life's work to give over half of it to the Government, even though it is all aftertax income. They have already paid taxes on it once.

The opponents of making the death tax repeal permanent believe it is worth forcing businesses to liquidate farms, to shut down, equipment to be sold, jobs to be destroyed, because they believe that having that money in Washington so they can spend it is worth it. Those who want to make the death tax repeal permanent do not believe that. Those who want to make the repeal of the death tax permanent believe we would be better off as a nation—we would be richer, freer, happier, and the world would be fairer—if, when families work and save and sacrifice and pay taxes on every dollar they earn in their lifetime and they build up a business, farm, or estate, that their death should not be a taxable event.

We will hear a discussion today that says, OK, we are willing to do this for some. We know it is bad for some people, but we want to pick and choose as to who has to pay this death tax. The position of those who want to repeal the death tax permanently is a position that we believe the tax is immoral. We believe it is wrong. We think, whether somebody's estate is worth $700,000, or whether they built a business that has 200 employees and that has tools and capital and land and trucks and equipment worth $10 million, we believe, if they built a business worth $10 million, that destroying that business to bring $5.5 million of that to Washington so we can spend it does not represent a good choice in public policy. After all, it is their money. They built it. They accumulated it. They sweated and saved and sacrificed for it.

That ultimately is the issue. We believe it is wrong to tax death. We believe it is wrong when people build up assets and build a business for government to then destroy it.

I showed data yesterday indicating more than 70 percent of small businesses that are founded by a family member do not survive into the second generation; 87 percent do not survive into the third generation. According to the NFIB, the No. 1 reason is the death tax.

It is time to fix this provision of the Tax Code. We are going to have an opportunity to do that. There will only be one real amendment. There are two amendments that give political cover. There is one amendment I will offer that is exactly the same language the House passed, and if we adopt it, it will go to the President and he will sign it into law. That is the issue. There is one real repeal, as my colleague from Arizona says.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Just so we know where we are, I know there was time during the quorum attributed to both sides. How much time remains on both sides?

The PRESIDING OFFICER. Forty-one minutes remain in opposition and 56½ minutes remain for the proponents.

Mr. KYL. Madam President, let me make two quick points. The first has to do with the question of who pays the estate tax or the death tax. We know it is not the person who died. We know it is the people who have the estate and who are required, therefore, to, in many cases, actually sell a business in order to generate the cash to pay the tax.

Who are the estate tax filers and what occupations do they hold? I am going to quote from official Internal Revenue Service reports. In the last analysis of the IRS of people's occupation and sex in filing estate tax returns, published in the Statistics of Income Bulletin, summer of 1999, pages 72 to 76, the IRS reports:

For males, the largest group of filers at 27.7 percent were administrators, upper management and business owners. The second largest group at 12.3 percent were schoolteachers, librarians, and guidance counselors. For females, the largest group of estate tax filers at 14.1 percent were educators. The next largest group at 9.6 percent were in clerical and administrator support occupations.

A significant number of the total of estate tax filers were scientists, sales people, entertainers, airline pilots, military officers, and mechanics. That is according to the IRS.

There is a vision of some fat cat sitting on a yacht someplace that we are going to stick and get a lot of money from to run the Federal Government. We know the Federal Government's collections of estate taxes are only 1 percent, slightly more than 1 percent of total revenue collections. Who is that money coming from? The largest group of women were educators. The next largest were clerical and administrator support people. They are airline pilots, scientists, salespeople, military officers, mechanics. I can understand the category of entertainers. But, remember, those entertainers pay a lot of income tax, too. And the second largest group of males is schoolteachers, librarians, and guidance counselors.

Do we want to punish these people because they have been lucky enough to have been born into a family in which their father or mother was able to accumulate some kind of an estate? This is perverse tax policy.

As I said this morning, the primary problem is that the businesses that have the value are not easily liquidated to generate the money to pay the tax. It is not as if when someone dies there is a lot of money in a shoe box and Uncle Sam taps you, as the heir, on the shoulder and says, I would like half of that, 50 percent. That is not what happens.

Ordinarily what happens is there is a business. We talked this morning about the Boone County Lumber Company in Columbia, MO. They have a lot of money tied up in lumber that they bought that they hope to sell—in trucks, in forklifts, in warehouses, and so on. That is equipment that enables 30 people to have a job. When the owner of that business dies, his family is going to have to make a decision. They do not have the money to pay half of the value of that business to Uncle Sam. The salaries that people take out are $48,000, $60,000, some approaching $100,000, and in some cases more than that, but most are the salaries of any other small business. And bear in mind, half the small businesses in this country are women owned. These salaries do not generate a whole lot of capital by which you can pay an estate tax. The only way you can get the money to pay the estate tax is by selling the business on which the estate tax is based. The estate tax doesn't say, How much money did you have left over at the time of death? The estate tax says, What is the value of the company or the business or the farm that you are running? The value of that business is based on the value of the equipment and the land, and so on, most of which are probably going to be financed and therefore probably already heavily leveraged. But that value determines what has to be paid to Uncle Sam—half of it. That is why the estate tax is particularly perverse, especially because you have to do the liquidation right after the time of death.

There is an effort by our colleague from North Dakota, who has laid down a second-degree amendment here—to ''improve on the existing law'' would be the way I think he would characterize it. He does this by providing that the exemption we provide in the law, that goes to $3.5 million, would go to $4 million, as I understand it; and for small businesses and farms it would become an unlimited exemption.

Certainly the sentiment behind that is laudable. The problem is it simply will not work. How do we know that? Because we know it currently does not work. The law currently provides methods for small business people and family farms to get an exemption from the estate tax. The exemption today is $1 million. It is going to go up in the future. The Senator from North Dakota would make it an unlimited exemption. But the problem is even unlimited exemptions are worth exactly nothing if you cannot qualify. In other words, there is a door you have to get through. There is a gate you have to get through. You have to stay on the other side of that or none of this matters, and that is the problem with the amendment of the Senator from North Dakota.

In the business, people referred to it as QFOBI, and I am going to do that for the purposes of brevity here, but it is technically the family-owned business exclusion. That is the provision of the existing law. There are actually two different sections under which people who have a small business or farm and who want to be exempted for part of the estate tax will try to qualify. But as I said, if you can't qualify under this provision, it doesn't matter how big the exemption is, you are out of luck. The problem with this QFOBI is it is much too difficult and too complex for most people to be able to qualify. I will give you an idea.

For the calendar year 2000, 108,322 estate tax returns will be filed. Of course, only 1,470 made the QFOBI election; in other words, about 1 percent of the total.

By the way, that number is actually a little higher than in some previous years. In 1999, for example, the total number of estate tax returns for which the exemption was requested was 173. In 1998, that number was 889. My colleague from Texas pointed out that only 32 people have ever qualified for a combination of both. But even take the larger number we have for the tax year 2000; that is 1,470, and that represents about 1 percent of the total of the estate tax returns filed.

If the percentage of people filing estate tax returns is as low as our Democratic colleagues for the most part say it is—and although I will contest it, let's assume for the moment they are right—it is maybe about 2 percent of all taxpayers; and if of that 2 percent only 1 percent of them qualify for this small business or farm exemption, then the amendment of the Senator from North Dakota helps a grand total of two one-hundredths of 1 percent of people filing tax returns—two one-hundredths of 1 percent. The fact is, it doesn't even help that many people because QFOBI is recognized as very treacherous for somebody to get involved in.

A representative of the American Bar Association testified before the Ways and Means Committee that the provision was simply too complicated to be effective. A professor of law at Temple noted that very few people would try to meet the qualification because of its complexity. The NFIB, which represents a lot of these people, testified

that qualifying for the family-owned exclusion currently is difficult, costly, and complex. Studies by numerous organizations and scholars routinely find that family businesses spend exorbitant amounts of revenue on lawyers, accountants, and financial planners in order to try to do this.

The reason I say even two one-hundredths of 1 percent is a high number is that the reality is, if you try to qualify for QFOBI, you are going to find yourself face to face with the friendly IRS.

The reason is the IRS will look at every one of these filings. They will contest a significant number of them. As a matter of fact, in the year 2000 there were 149 cases pending, which represents about 10 percent of the total number that were filed at that time—the total number of estate tax returns filed at that time. There are an equal number of cases in the administrative process. You first have to go through the administrative process, and then you will actually have your case taken to court.

What happens when the IRS challenges these? The IRS wins. As of the last time we have statistics, the IRS had won 67 percent of the cases.

So if you have the courage to try to qualify under this QFOBI election, understand you are going to have the IRS question the value. It is going to be an administrative appeal. At least 10 percent of the cases are going to be in court. And you are going to lose two-thirds of the time.

That is why the group of lawyers that works on these kinds of things, the section of the American Bar Association which handles estates and taxes, has recommended to their lawyers that they not try to help people qualify because it is too risky from a malpractice point of view. They have recommended that this particular section be repealed.

The bottom line is that it doesn't matter whether you have a $1 million exemption or a $3.5 million or a $4 million exemption or an unlimited exemption for small businesses or family farms; if you cannot qualify in the first instance, it does you no good. From what we can find from IRS statistics, only two one-hundredths of 1 percent qualify. That doesn't take into account the challenges by the IRS.

Let me just make one last point, and then I think there are others who would like to speak.

I am not going to read to you the page after page of complex provisions. It is a nightmare to read and understand. I am a lawyer. I don't understand it. It takes a real expert to try to figure out how to make this work and, as I said, the ABA itself has recommended to its members that they approach this with extreme caution.

One of the problems with the people who qualify is this. Let's assume you are one of the lucky two one-hundredths of 1 percent who actually qualify and you have gotten through the IRS hurdles. What does this mean for you now that you have qualified? Are you home free? Not exactly. There is a 10-year period of time in which the IRS can—and I love this term—''reach back'' and collect the tax from you.

There is a lot that can happen that could cause that to occur. If you have trouble in your business, for example, and go bankrupt, that is tough; as far as the IRS is concerned, they can go back and collect the entire estate tax from you.

But here is what happens even if things go well. The IRS, if you qualify—believe me, this is the truth. It seems that it could not possibly be, but under the amendment of the Senator from North Dakota and the existing law, the IRS has a lien on your property, all of the estates that would be subject to the estate tax, for 10 years. And they have a first position, which means: Good luck if you want to try to get financing for anything. Every small business finances its inventory, its machinery. We do not go out and buy a house and pay cash for it. We get a loan from the bank or from Fannie Mae, FHA or someone, and we finance a home. That is the way small businesses finance their operations. But, good luck going to the bank when they know the IRS has a first lien for a period of 10 years and the bank only has a second position. That is a poor position to be in, and the bank will tell you one of two things—either: Sorry, we can't lend you the money or: We could lend you the money for 2 or 3 or more percent premium.

In other words, if you qualify for this provision, you are going to have to pay a lot more money if you can get financing in order to finance the continued operation of your business. Basically, it is a set up for failure. That is why most people do not even try to qualify for it. Many of those who try cannot qualify for it. It is an extraordinarily complex and ineffective provision. Therefore, with all due respect to my friend and colleague from North Dakota, his attempt to grant an unlimited exemption for small businesses and farms is fatally flawed. Very few, if any, of these small businesspeople or farmers are going to be able to qualify. As a result, the amendment is, in fact, a nullity, and does nothing to help the very people who all of us would like to help.

I will relinquish the floor at this point and hope as the debate on the amendment is concluded that I will have an opportunity to talk about the comments that the Senator makes, and also to point out again that the people who actually pay this tax are not the kind of people you might envision but they are schoolteachers, airline pilots, mechanics, librarians, guidance counsellors, and the like, according to the IRS itself.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from North Dakota is recognized.

Mr. DORGAN. Madam President, inform me of the time remaining on both sides.

The PRESIDING OFFICER. The Senator from North Dakota controls 56½ minutes and the time in opposition is 25 minutes.

Mr. DORGAN. Madam President, my amendment is cosponsored by Senators DURBIN, CARNAHAN, CORZINE, and STABENOW.

Let me respond to some of the discussion we just heard. I have great respect for my friend from Arizona. I have listened to him with great interest in previous debates about repealing the estate tax. He believes passionately that we ought to get rid of the estate tax and makes the case for it. But I was reminded when I heard his discussion of my amendment of Mark Twain who was asked once if he would be willing to engage in a debate. He said: Of course, I would—as long as I can take the negative side. They said: We have not told you the subject of the debate. He said: It doesn't matter. The negative side will take no preparation. It is easy. It is inherently easy to oppose things.

The way the opposition renders this amendment is almost indescribable to me. I am the one offering the amendment. But the interesting discussion that incorrectly describes this amendment needs some correction.

Let me begin by talking about why we are here and what this debate is about. Then I will describe my amendment.

We are here because our country, a little more than a year ago, decided on a new kind of fiscal policy. Those who seemed to think they knew saw surpluses for years and years ahead—surpluses as far as the eye could see for the Federal budget. They said that because we have all of these surpluses that stack up in the future, let us cut taxes and let us do it right now. By the way, they said, let us cut the estate tax sequentially so in the year 2010 it will be completely repealed.

It is true that the goofy kind of proposal finally offered and passed into law takes the estate tax right up to the repeal in 2010, and then reinstates it in 2011. Historians will scratch their heads for some while when they evaluate what was done a year ago on estate tax.

Our colleagues who want to repeal the estate tax forever because they said we are going to have these large and continuing budget surpluses say, although they wanted to reinstate it in 2011, they now want to make that repeal permanent.

Of course, over a year later, things are different. We don't see surpluses as far as the eye can see.

Yesterday, the Senate had to consider an increase in the debt limit. Why? Because surpluses have turned to deficits. The country has an economy that is in some trouble. We now have deficits for some years into the future. Yet my friends on the other side of the aisle are coming to the Senate saying: Oh, by the way. Our urgent priority is to permanently repeal the estate tax.

Let us evaluate what these priorities are about.

Do we have a priority, for example, to try to help people at the bottom of the economic ladder in this country—people who are working for the minimum wage who haven't seen an increase for years and have seen the value of that minimum wage eroded? Do we have an obligation to them? Is that a priority? No. It is not a priority for some. They do not want that question on the floor of the Senate.

Do we have a priority to see if we can't do something about people who do not have health insurance—over 40 million people who tonight may find their child is sick, discover they do not have any money in their pocket or in their bank account to help take care of their child? Do we have a priority to deal with sick children and people who do not have the capability of providing health insurance for their children? No. That is not a priority for some.

How about schools? Are schools a priority?

I have spoken on the floor of the Senate many times about schools. I toured a school populated largely by American Indians. But it is a public school district. And a little girl in the third grade named Rosie Two Bears looked up at me and said: Mr. Senator, will you be able to build us a new school?

Do you know why they needed a new school? Because there are 150 kids and two toilets and one water fountain. They were holding classes in a basement room in a building that had been condemned long ago. Two or three times a week they had to evacuate that classroom because sewer gas was backing up in the classroom. Rosie Two Bears wanted to know if her Senator could build her a new school. Incredibly, the answer is we don't build new schools.

But the question is, Is education a priority for that young girl and others around the country? Not for some—that is not on the floor of the Senate.

This isn't about helping people at the bottom of the economic ladder. This is not helping to address the issue of health care costs, or lack of health care coverage, or lack of insurance for some American families—nearly 40 million of them. This is not about improving American schools. No. This issue is different than that. This issue is saying, let us permanently repeal the estate tax.

How narrow is this? Let me describe the amendment I am offering and that I offered last year which got 43 votes. Those who now speak loudly about the need to repeal the estate tax voted against my amendment last year.

My amendment said the following: It said, let us have a $4 million exemption per estate—$8 million for husband and wife. If you have fewer assets than $8 million, you pay no estate tax under any circumstance.

My amendment also said, by the way, this issue that the other side continually says persuaded them to deal with the estate tax—that is, the inability to pass a family farm or a small business from the parents to the kids—let us totally repeal the estate tax for the passage of a family farm or business. If it is family owned, the parents die, and the kids want to keep running it, I say don't interrupt the transfer of that business. Let us not have the kids inherit a business and a crippling estate tax. Let us allow them to inherit the business exempt from the estate tax, if they want to keep running it.

This says no estate tax at all. Repeal it for the transfer of a business from parents to children who want to keep running it.

It is very simple. We will do it in 2003. I offered that amendment last year.

Those who come to the floor of the Senate and say they are persuaded to propose a permanent repeal of the estate tax because they care so much about family businesses and the transfer of family assets to the kids who want to run the business are the ones who voted against my amendment. This amendment will provide that repeal next year. Their proposal would provide the repeal some 7 years later.

One wonders whether they care less about this issue and more about repealing the estate tax for the wealthiest Americans. Or do they really care about family businesses and family farms? If so, this is the amendment to support.

Let me talk a little bit about privilege and those at the upper end of the economic ladder.

I think it is terrific that in this country people do well. In fact, we have some innovative geniuses in this country who have done very well. One-half of the world's billionaires live here, and good for them.

But let me talk about the question of whether our priority at this point—given the kind of Federal budget deficits we have and the kind of economic problems we have—ought to be to bring to the floor of the Senate a billionaire tax relief package. Because that is what this is. This is all about, let's cut taxes for billionaires. And you can describe it however you want.

You can put all kinds of seasoning in it. You can stir it up, boil it; you can do whatever you want with it. Just strip it away, it is a tax cut for billionaires, when we have very big Federal deficits and when we have other priorities that some in this Chamber want to ignore.

Let me talk about some of these issues. Here shown on this chart are people who are going to benefit from the proposal on the floor of the Senate to permanently repeal the estate tax. That is why I want to amend it, so we don't repeal the estate tax for everybody.

The chief executive officers of our corporations in this country, in 1980, made 42 times the amount of money that the average worker made. Twenty years later, they made 531 times the money the average worker made. That is who is going to benefit from what the minority is proposing here today.

In 1981, the average compensation of the 10 highest paid CEOs in a U.S. corporation was $3.5 million. I come from a town of 300 people, a small high school class of nine. I happen to think $3.5 million is a lot of money. So is $3.5 million a year in compensation. That was 20 years ago. Do you know what it is today for the 10 highest paid CEOs in the country? It is $155 million a year.

That is who benefits from this tax cut. That is what this debate is all about. They say that these folks pay too much in taxes, so they want an estate tax repeal even including the highest income earners in our country. And they will do that at the expense of all the other priorities that exist in this country.

I say, yes, let's repeal the estate tax for the passage of family-run businesses and farms. Let's provide an $8 million threshold for families, below which you will pay no estate tax. But if you are fortunate enough to have tens and hundreds of millions and billions of dollars, I think it is important to understand a couple things.

One, most of that has never ever been taxed. Most of it comes from the growth appreciation on assets and has never been subject to a tax. And, yes, I think your descendents ought to get a fair part of that. But I also think this country ought to capture part of that and use it to invest in our kids, invest in education, invest in the solvency of Social Security, invest in the solvency of Medicare, to strengthen this country. That is what I think ought to happen.

Let's talk about compensation just for a minute. I mentioned some of the compensation that exists for individuals. I have a chart that shows the 1-year compensation in the year 2000. These are the people, incidentally, who are the beneficiaries of this proposal. And I guess I don't know of a time when I have heard people come to the floor of the Senate and say: I know we face a big budget deficit, I know our economy is in some trouble, I know we have other priorities—education, health care, and other things—but our priority is to provide a tax cut for the wealthiest Americans. These figures—$290 million, $225 million, $157 million—these are individual compensation numbers in the year 2000 for people who ran America's corporations. These are the people who will ultimately benefit from repealing the estate tax.

We have a lot of folks out there in this country who are working hard, trying to do the best job they can. Look, they are never going to pay an estate tax. They are not going to have $8 million, as provided under my amendment. But their proposal today is to say $8 million isn't enough of a threshold; we need to be able to exempt those who have $20 billion, those who have $2 billion, those who have $500 million in assets, so none of those assets can ever be used to help America's

children, to invest in America's schools, to strengthen Social Security, to strengthen Medicare, and to do the other things we also know are necessary.

So my amendment, as indicated, is very simple. It was described in a tortured way by my colleague from Arizona. He said: Well, you know, if you try to exempt family businesses and family farms, you run into this web of complexity. A web of complexity, he calls it. So the result is, we have to exempt from the estate tax billionaires in order to solve the issue of family farms and family businesses? I don't think so. I think if you go into any store in the county, they call that a bait and switch.

You come out to the floor of the Senate and say: Look, our mission is very simple. Our mission is in support of family farms and small businesses. That is what we are trying to do, to get rid of the crippling estate tax that exists on the transfer of a business or a farm from the parents to the kids. I say, if that is your mission, then I am with you.

Let's repeal the estate tax for the transfer of that property. The kids want to run the business? It is fine with me. I don't think we ought to shut the business down. I don't think we ought to load the business with an estate tax debt. I think the parents ought to be able to move that business to the kids upon the death of the parents with no estate tax obligation at all. And that is what my amendment does.

No amount of arm waving in this Chamber can obscure the fact that we have an exemption that is workable. It has only been in existence since 1997, I might say. It was described as QFOBI, which is an acronym. We use too many acronyms in this town. The fact is, if you have spent the last couple of years of your career talking about protecting small businesses and family farms, and its passage to the kids, then don't vote against this amendment and say to folks back home: Oh, by the way, it was too complicated.

This amendment I offer does two things. It provides an $8 million unified credit threshold for a husband and wife, below which there is no estate tax. It is repealed for everybody below $8 million in assets, husband and wife. And second, and most important to me, is that family businesses, regardless of size, if transferred to the kids—and if those kids continue to run those family businesses—will be exempt from the estate tax; and, no, not in 2010, but in 2003.

You see, the problem with the proposal offered by the other side, first of all, is they propose a complete repeal, but it just kind of dribbles along, as with most of their proposal; they just dribble it out over a period of time. If it is worthy to say, let's not interrupt the transfer of a family business, so the kids can continue to operate it without an estate tax obligation—let's do it next year. If you don't want to do it next year, then vote against our amendment, but don't you go home and say you stood for family businesses and family farms. Don't you dare do that, because voting against this amendment, just as many of you did last year—we got 43 votes in favor—voting against it is to say to folks back home: No, I want you to wait 7 or 8 years for the relief that was offered permanently in this amendment for family businesses and family farms.

Ms. STABENOW. Will my friend from North Dakota yield?

Mr. DORGAN. I am happy to yield.

Ms. STABENOW. I thank the Senator.

I rise to thank my colleague for this amendment. And I join him. I am very proud to be a cosponsor of this amendment. I appreciate very much what he is doing.

It seems to me, as we have looked at this issue to find the right balance, that this amendment is in fact the right balance. It says that we will say to our family farmers and family-owned businesses—of whom we have many in Michigan—that we want to make sure, after you have worked hard and your family has been able to develop a good business or family farm, that if you want to pass that along to your children, you will be able to do that and that it not be jeopardized in any way. That makes perfect sense to me. I support repeal for family-owned enterprises.

I think it also says that we are going to set a limit, we are going to set priorities for the country, so when we are talking about a billionaire versus having the resources for seniors or families to be able to afford prescription drug coverage—which is also a tax, I would argue a significant tax, on our seniors and our families—or whether it is looking at the priority of educating our children, we are going to have a balance, and those who are the top billionaires in this country ought to contribute to national defense and the war on terrorism and education and health care, and so on.

So I wonder. I would just ask my friend from North Dakota a question. It is my understanding that our amendment would in fact exempt 99.5 percent of all of those who might pay the estate tax. Is that correct?

Mr. DORGAN. The Senator from Michigan is correct. Well over 99.5 percent will no longer have to pay an estate tax. But even that is not enough for those who insist on complete repeal. Those who insist on complete repeal are saying—during a tough time, where we have Federal budget deficits and other priorities that we can't fund—they are saying: This is our priority. The top of the heap. Those at the very top, the billionaires, the $100 million per year executives, that is our priority. We believe that our priority is to exempt those estates from an obligation.

The Senator from Michigan is right. Over 99.5 percent of estates will not be subject to an estate tax.

When the Senator from Arizona was present, he said this issue called QFOBI, which is the method by which you value the assets of family-owned businesses, is totally unworkable. The Center on Budget and Policy Priorities says that businesses can easily qualify for this special status as long as the family owns and operates the business and intends to continue to do so.

Let's say you have a $200 million family business, a big one. In my judgment, if it is family owned, it goes to the lineal descendants. If they want to continue to operate it, no tax. We repeal the estate tax for that transfer. If, however, there are not lineal descendants who want to operate it—one lives in California and one in Florida, one in Texas—and they want to sell the assets, they have the same $8 million exemption that we would provide in this amendment.

The Senator from Michigan is correct. This affects very few estates. They are only the largest estates, and that is what we are fighting about.

We have people here saying: That is our priority, tax exemption, tax relief for the highest income earners in our country at a time when we have so many other priorities.

Ms. STABENOW. If I might again say to the Senator from North Dakota, I thank him on behalf of Michigan family farmers and small family-owned businesses, as well as large family-owned businesses, for putting forward what I believe is, in fact, just the right balance. We say to our family-owned enterprises, we want you, if you have worked hard all your life, to be able to pass on that business, that farm to your family. We want to make sure you are not paying the inheritance tax. But at the same time we say to middle-class families and seniors and everybody else in the country that we are going to make sure your priorities, those that affect the majority of Americans, will be funded before we, in fact, give a tax cut again to the top half a percent of the public, the top billionaires of the country.

It is the right balance. It is the right set of priorities. I thank my friend. I appreciate the opportunity to join with him in his amendment.

How much time remains on my side?

The PRESIDING OFFICER. The Senator has 35½ minutes.

Mr. DORGAN. I reserve the remainder of my time.

Mr. GRAMM. Madam President, how much time do we have?

The PRESIDING OFFICER. The Senator has 25 minutes.

Mr. GRAMM. Let me take 5 minutes of it. Then I will yield to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Madam President, facts are persistent things. The good thing about fiction is you can always have it the way you want it. If you make it up, it can always be good, if you are for it. It can always be bad, if you are against it. But facts are persistent things.

In 1997, recognizing that we had confiscatory taxes on small businesses and family farms upon death but not being willing to repeal the death tax, which our Democrat colleagues are not willing to do—the only vote we are going to have today that would repeal the death tax or would change the death tax, the only one that would go to the President to be signed today is the one I will offer—wanting to get credit for helping without helping, we adopted a provision called 2057. That is the closely held family business exemption.

Our colleague says: We will expand it so it will cover every small business, every family farm.

It has been in effect for 5 years. How many farmers and ranchers do you think have qualified for this protection in 5 years? In 5 years that this provision of law has been in effect, only 33 farm and ranch families have qualified.

This bill that is being offered as an alternative to the real repeal of the death tax is not about 33 families. It is about protecting 40 Senators by giving them a fig leaf when they vote against repeal of the death tax.

The plain truth is in 5 years of being in effect, this provision has afforded relief to 33 farmers and ranchers. And why? It is 17 pages of single-spaced requirements. It gives the government a lien against your property for 10 years. It sets up requirements like ownership of assets for at least 8 years, when if you are growing chickens, they don't live 8 years.

The bottom line is, this is absolutely unworkable and meaningless except for fewer taxpayers than we are going to have Senators vote against repeal of the death tax.

I go back and make my point: Our colleagues know this is an issue that Americans care about. They desperately want to spend the money we are collecting by making people sell their farms, sell their businesses upon the death of the founder in order to give the government 55 cents out of every dollar they have accumulated in their lifetime. But rather than repeal the tax so that this absolute tragedy and theft could stop, this outrage could end, they are offering basically a proposal that has proven to be unworkable.

When it gets down to the bottom line, the question before us is a very simple one: Do you think it is worth making people sell their business, sell their farm, sell off the product of their life's work to give government 55 cents out of every dollar they have accumulated, even though every dollar they have accumulated they have paid taxes on, so that Government can spend that money? Or do you think it would be better to let people keep the money and eliminate the situation where death is a taxable event? That is the question before us.

There is only one real repeal. I have been around the track before. I have seen it. I know what is going to happen here. We are going to have a bunch of people who are going to vote to sustain this point of order so that even though we have a majority who want to repeal the death tax, we won't be able to do it today. But they are going to vote for these proposals where only 33 farmers and ranchers in 5 years have qualified, and they are not outside the 10-year window. They may not end up qualifying.

They are going to go back home and say: Look, I wasn't against repealing the death tax. I just was against their repeal of the death tax.

There is only one real repeal, and that is the one that passed the House.

I yield 5 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Madam President, I thank my colleague, the Senator from Texas, Mr. GRAMM, and my colleague from Arizona, Senator KYL, for their tremendous effort in working on eliminating the death tax.

I rise in opposition to the Dorgan amendment and in support of the Gramm amendment which is the provision that was passed out of the House of Representatives last week. Fundamentally, if we want to help farmers and ranchers, if we want to help small businesspeople, we need to kill the death tax. It is a sham to put in qualifiers and provisions so that such a small number of small businesspeople can qualify instead of eliminating the tax altogether.

What we need to do is to kill the death tax. This unfair tax has been a concern of mine for some time. I have previously introduced my own legislation to eliminate the death tax. I was pleased to support the repeal of the death tax as part of last year's tax relief package. But those cuts simply do not go far enough.

One of the tenets of a fair tax system is that income is taxed only once. I know this argument has been made a number of times by my colleagues. These small businesspeople, farmers and ranchers, families are subjected to a tax that is initiated at the time of tragedy in the family, an event when somebody passes away. This is money on which the taxpayer has already paid taxes. Income should be taxed when it is first earned or realized. It should not be repeatedly taxed by the government.

The death tax simply violates this tenet. The way I see it, it comes down to one question: Should death be a taxable event? I emphatically believe the answer is no.

People who work hard and save throughout their lifetime should be able to expect that the products of their labor will go on to help their family, not go on to fund some politician's pet project.

This issue of the death tax really hits home for me. Family farms and small businesses are two of the groups most affected by the estate tax. I grew up on my family's ranch in Colorado, and I owned a small business before I came to Washington. So I truly understand the concerns of those who live in fear of the impact that this tax will have on their legacy to their children.

The estate tax has resulted in the loss of family farms and family businesses across the Nation. Many people work their entire lives to build a business that they can pass on to their children. When these hard-working businessmen and farmers pass away, their families are often forced to sell off the business to pay the estate tax.

I see this as an affront to those who try to pass on the fruits of their life's work to their children. America was founded on entrepreneurship and hard work, and a high death tax serves to stifle both.

The people affected by this tax are not necessarily wealthy. Many small businesspeople are cash poor but asset rich. For example, the owner of a small restaurant might have $800,000 of assets but not much cash on hand. Her children will still have to pay an excessive tax on the assets.

The produce wholesaler, who has invested all of his revenue in trucks and storage, might have more than $700,000 in assets. That does not make him a cash-wealthy man. Yet he is still subject to this so-called ''tax on the wealthy.'' In too many situations the heirs must dismantle or sell a family business simply to pay the taxes. This isn't right.

The death tax also impacts employment and the economy. When a family-owned farm or a small business closes, the workers lose their jobs. Conversely, leaving resources in the economy can create jobs. In fact, in a 1995 Gallup Poll, 60 percent of business owners reported that they would add more jobs over the coming year if the death tax were eliminated.

Additionally, the estate tax is a disincentive for Americans to save their earnings. The government has created a number of tax breaks and other incentives for those who save their money: 401(k)s and IRAs—to name a few. Yet the estate tax sends a contradictory message. Basically, it says, ''If you don't spend all your savings by the time you die, the government will penalize you.'' This tax is no small penalty, either. We are talking about some very high tax rates.

The death tax also represents an unjust double taxation. The savings were taxed initially when they were earned. Then, when the saver passes away, the government comes along and takes a second cut. There is no good reason for the current system—other than the government's desire to make a profit.

The current death tax law has a greater effect on the lower end of the scale than the higher. Wealthy people can afford lawyers and planners to help them plan their estate. Those at the lower end of the estate tax scale are often unable to afford sophisticated estate planning. So the current law also makes the tax somewhat regressive, which is not fair. This is particularly

true given the uncertainty of the tax due to phase in and sunset dates.

Planning and compliance with the estate tax can consume substantial resources. The National Association of Manufacturers has reported that more than 40 percent of its members have spent at least $100,000 on death tax planning. For three out of five members the annual compliance costs are more than $25,000. This is money that could have been better spent to expand the business and create new jobs—rather than dealing with the death tax.

The estate tax only raises 1 percent of Federal revenue, yet it costs farms, businesses, and jobs. No American family should lose their farm or business because of the Federal government. I support full permanent repeal of the Federal estate tax.

I urge my colleagues to end this unfair system and join me in supporting permanent repeal of the death tax.

Mr. DORGAN. Madam President, I yield 10 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Madam President, I am happy to stand as a cosponsor of the amendment by Senator DORGAN and Senator CARNAHAN of Missouri. People who are following this debate in our Chamber and by C–SPAN must wonder what we are doing today. We are talking about tax cuts, tax breaks, tax relief.

Can you think of a more popular issue or subject for us to entertain on the floor of the U.S. Senate? Forget for a moment that we are in deficit, that we are taking billions of dollars out of the Social Security trust fund because of our last tax decision and events that have intervened. Forget that for a moment and just concentrate on tax relief for America.

If you would go out on the street corner in Springfield, IL, or in Chicago, which I represent, or in Texas or in North Dakota, and say to the first five people walking by: If Congress is going to consider tax relief and tax cuts, what do you think they ought to concentrate on? I guarantee you not a single soul will come up to you and say: What they ought to concentrate on are the multimillionaires who may pass away and owe some money to the Federal Government; that is the thing that keeps my family up at night. We are worried about that possibility—that someone who is worth millions of dollars may end up paying some money to the Government.

No. Most people would say: I will tell you what bothers me, Senator. I cannot figure out how to pay for my kids' college education expenses. Why don't you make that deductible? That would help my family and would help our country. That makes sense, doesn't it?

If you went into the store on the corner and said to the businessperson at the store: What do you think is a good tax relief measure for Congress to consider? They might say: I am not sure how you do it, but can you help me pay for health insurance for my wife, myself, and my employees? It is killing me, going up 25, 30 percent a year. There is another interesting idea for tax relief.

Then you go to the other corner and stop by a senior citizen gathering and say: Do you have any ideas for something we can do by way of tax relief? They will probably say: Senator, can you do something about the high cost of prescription drugs in this country? We cannot afford to fill the prescriptions the doctors give us.

There you have it—three proposals you are likely to find in any city or town in America to deal with real American family problems, such as paying for a college education, paying for health insurance, affording prescription drugs. You might ask yourself, of all the possibilities, why is Congress focusing instead on tax relief for the wealthiest people in the country and ignoring the tax relief that the average person in America would like to see us enact? The reason is because the special interest groups have been at work.

First, they hired the pollster who decided to stop calling it ''estate'' tax and start calling it a ''death'' tax. People think that is terrible that you are going to tax someone for dying. Well, look at the Senate floor here. Look at the other side. The poster says: ''repeal the death tax.'' So they caught on. From now on it is no longer the estate tax, it is the death tax.

And then they said you have to convince everybody in America that this is a tax they have to worry about. Forget for a moment that it is only a handful of people who ever pay the Federal estate tax. I went to O'Hare Airport a few months ago when we were in the middle of an earlier debate on this issue. This is a true story. The baggage handler for United Airlines who took my bags at the sidewalk said to me: Senator, would you do something about this death tax? I almost said to him: Sir, there is no way in your lifetime, even if you win the lottery, that you are likely to ever pay the Federal estate tax. What you ought to think about is getting your kids through college, health insurance, prescription drugs for your mom and dad. Those are the things that will affect your life.

They have done very well here. They have convinced the average person in the street that the Government is standing by the funeral home waiting to slap a lien on the car of the widow. It just is not true.

Let me tell you something else they are arguing. They are arguing that this is a tax that is destroying farmers and small businesspeople, that they are taking away a farm that has been in a family for generations because of the estate tax.

I wrote a letter to the Illinois Farm Bureau and the Farmers Union last year and said: Can you give me one example of a farm in the State of Illinois—just one example—of a farm family who lost their farm because of the Federal estate tax? No; none, zero; not one example. Senator DORGAN and I came together with Senator CARNAHAN and said: Let's go after real estate tax reform that solves any problems we can envision. I salute Senator DORGAN for his leadership because he said: Why don't we just flat out exempt any farm, any business that is going to be transferred from one family member to the next? Let's just say they will not pay any estate tax. That puts it into the argument that this is confiscating businesses and farms.

The amendment is very simple. It is very straightforward. Guess what. It takes effect next year. It is immediate. So all of those who vote against the Dorgan amendment are saying, postpone this and for 7 years, leave businesses and farms in the lurch, if there is one, when it comes to estate tax liability.

Senator DORGAN put together this amendment, which I cosponsored, which says farms and businesses which pass to lineal heirs—children—are not going to pay any estate tax. That is as clear as it can be, and it goes into effect immediately.

Then he says: Let us increase the exemption for other estates from what will be about $1 million to $4 million for individuals, $8 million for married people. What would that cover?

Let's assume you bought a home that has dramatically appreciated in value. I have seen it in Illinois, Washington, California, you name it, and you have an estate that is left over that has a value of over $1 million. The Dorgan-Durbin-Carnahan amendment will exempt your estate from paying any Federal taxes, $4 million for an individual, $8 million for a couple.

Yet the Republicans have said that is not nearly enough. Madam President, you know who they are protecting? It is not a farmer. It is not a businessperson. It is not a person who has really done pretty well in life. It is the superrich.

The Senator from Texas called the estate tax an absolute tragedy and theft—theft. The Senator from Colorado then said: Why should death be a taxable event? Let me ask a question: Why should work be a taxable event? People who get up every morning and struggle in the workplace at their job pay income taxes. We pay taxes on sales, on income, and other items in our society so we will have enough money to make sure the Department of Defense can defend America, so there are hospitals, highways, and schools that add to the quality of life of our country.

I will tell my colleagues what we are going to do: If the Republicans have their way and eliminate the estate tax for the superrich in America, they are going to put a greater burden on taxing work in America. They will push more

of that burden right down to the working person, the average working family. That is not fair. It is totally unfair.

If this Senate is going to address real tax reform, we should at least be fair in the way we address it and not make certain that the wealthiest people in this country are always the first to benefit from tax relief. This debate ignores the average person, the average family, and the average business and farm in America.

This debate is about protecting the superrich who have their voices on the floor of the Senate and in the hallways right outside all lined up. They come here in their Gucci loafers and their fine tailored suits, and they put in these amendments to protect the superrich.

Meanwhile, day in and day out, the average person, the average family in America works hard and worries about paying the bills. Why in the world are we doing this?

To call this an absolute tragedy and theft is to ignore the fact that eliminating the estate tax on the wealthiest people in America will create a theft on our Treasury, it will create a theft on the working families of this country.

Do my colleagues want to know what the highest tax priority ought to be in our country? The highest tax priority ought to be on working families, and we are not doing that today. We are ignoring working families. We are trying our best to preserve the very best for the wealthiest of our country.

I am happy to support this amendment. I also want to indicate, we took a little survey since 1990 of all the times the estate tax issue has come to the floor of the Senate. It goes on for hundreds and hundreds of occasions.

We have a chance today with the Dorgan amendment to do something that finally puts this to rest. We do it in a sensible way. We do not raid the Treasury and we do not say 10 years from now we are going to jeopardize the Social Security trust funds so we can give a favor to the wealthiest people in this country.

It is interesting, when this debate got underway, some of the wealthiest people said: Stop, I don't need your tax relief; I am doing just fine, thank you. That does not dissuade those on the Republican side of the aisle from pushing this idea and saying: If we are going to give any kind of break in America, it should go to those well off.

I have been reading what has been going on in terms of corporate CEOs who are waltzing away with millions of dollars from these corporations even when the corporations are failing. These are people worth tens of millions, hundreds of millions of dollars, the very people the repeal of the estate tax is designed to protect. Do you have a lot of sympathy in your heart for some of these CEOs who have falsified their business records, who have been guilty of the worst corporate irresponsibility? My sympathy goes with the working families, and my support goes for this amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Madam President, I yield 5 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Madam President, I thank my good friend from Texas. I say to my colleague from Illinois, if the wealthiest people say not to bother repealing the death tax, it is probably because it does not bother them. A lot of the wealthiest people do not really worry about the death tax. If you have enough money, it does not matter what you would pay. Most of them can spend hundreds of thousands and millions of dollars to avoid the death tax.

By and large, the people who are paying the death tax are not the very wealthy. They are hard-working people, many of them educators, as my colleague from Arizona has pointed out. But there are an awful lot of farmers and small businesses.

I have spent a good deal of my time in my service in the Senate listening to farmers and owners of small businesses. In fact, that is where I get most of my ideas. That is where we got the idea to strengthen the regulatory relief for small businesses and to provide the assistance we give to farmers to open up markets abroad.

We have talked about regulatory relief, and we have provided a number of areas of tax relief, but one of the issues that is the top priority for the farmers and the small businesses in my State is getting rid of the death tax. These are not the wealthiest people. These are people who fear that what they have worked hard to save, to put away, to leave to their children, is going to be taken away by the tax collector.

This morning we had a news conference. We were joined by Brad Eiffert of Columbia, MO. He owns Boone County Lumber Company. He and his brother work in a business that their father started. They have a very successful business with 30 employees. They have worked hard, and they have a great deal of equipment used in their business.

They want to continue the business after their father passes on, but they have found that, because of the investment in the equipment, they will have to pay a tremendous estate tax. So now each year they take out of that business almost $60,000 for insurance premiums to pay the tax man. This is money that could be going to the employees, it could be going to buy new equipment, or it could be going to build the business in many ways. They really want to get rid of the death tax.

Farmers I have talked with have told me that they have spent over $100,000 in lawyers fees and accountants fees trying to figure out how to get around the tax. The lawyers get the money, the accountants get the money, and they hope that the Federal Treasury will not get the money. They have to spend a lot of money, that they should be putting back in their farm, to figure out how to avoid this tax.

So what they avoid does not come to the Treasury, but there is a heavy planning cost on how to get away from paying the estate tax that is paid by small businesses and farmers.

Before us we have an amendment which says we are going to expand section 2057 of the Internal Revenue Code, the Qualified Family-Owned Business Interest exclusion, QFOBI, I guess is what it is called. My colleagues propose to make it bigger, better, longer, and stronger, but in 2000 only 1.3 percent of family-owned businesses applied for this 2057 exemption.

There are people saying we are going to allow you to save small businesses and farms from the estate tax through this provision, but the provision does not work. In short, a flat tire cannot be made to roll simply by making it bigger. This 2057 exclusion is too complicated to provide widespread relief to estates harmed by the death tax.

As my colleague from Arizona has pointed out, it is so complex that the American Bar Association urges its tax lawyers not even to try it because it is so filled with traps and so many Catch-22s that they can get sued for malpractice if they try to use it.

In order to qualify, the business must constitute at least 50 percent of the estate's value. The decedent must have owned and been actively involved in the family business for at least 5 of the 8 years leading up to his or her death. Following the death of the owner, the heirs must continue to participate in the business for at least 10 years.

But once the business is transferred, the estate tax deferred by receiving this designation hangs over the business for at least 10 years, and the IRS has a first position lien on the property. So the small business cannot borrow money without going to a loan with a secondary position, if they can even get one. Moreover, such loans cost them more.

If the business goes bankrupt and they cannot continue it, then the IRS goes back and gets the entire estate tax. One hundred percent could become due with interest. Not surprisingly, there are not many people who are willing to play this kind of Russian roulette.

If this amendment were to become law, I can only imagine the insurance premiums that would be required.

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

Mr. BOND. We need to kill the estate tax and keep it dead and not let it spring back. That is what farmers and small businesses in my State want.

The PRESIDING OFFICER (Mr. REED). Who yields time?

Mr. DORGAN. Mr. President, I yield 10 minutes to the Senator from Missouri.

Mrs. CARNAHAN. Mr. President, I am pleased to offer this amendment along with my good friends, Senators DURBIN and DORGAN. Our amendment will, as of January 2003, permanently exempt all small businesses and family-owned farms from the estate tax.

Let me repeat that because I do not want there to be any confusion. The Dorgan-Durbin-Carnahan amendment will eliminate the estate tax burden on all small businesses and family-owned farms effective January 2003.

The estate tax is having an impact that was never intended when it was first enacted. Those in line to inherit family-owned businesses and farms are having to sell them to pay the estate tax. That is not right. Parents who work hard for their whole lives building up a business want to pass the fruits of their labor on to their children. The same is true of farmers. We want family farms to be passed through the generations. We want children to be able to farm the land farmed by their parents and possibly their grandparents before them.

The amendment that Senator DORGAN, Senator DURBIN, and I are offering today would allow just that. It would ensure no family-owned business would ever have to be sold to cover estate taxes. So perhaps one is asking: What is the difference between our amendment and Senator GRAMM's amendment? Well, there are big ones. First, Senator GRAMM's amendment does nothing for family-owned enterprises until 2011. Under the Gramm amendment, they will have to continue to pay estate taxes for the next 7 years.

Our amendment would end estate taxes on family-owned farms and businesses beginning next year. We have heard today concerns that the exclusion for family businesses is complex. I am more than willing to work with my colleagues to improve the family business exclusion, and I welcome their support for our proposal to truly protect family farms and businesses.

Our amendment would also relieve family-owned enterprises from the burden of estate planning. Since there would be no estate tax, there would be no need for estate planning. Under Senator GRAMM's amendment, the full estate tax will remain in effect until 2010. So family-owned enterprises would still have to pay a lawyer and an accountant to prepare for the possibility that they may be subject to the tax.

The other key difference is that Senator GRAMM's amendment would permanently eliminate the estate tax for multibillionaires. I do not believe this is good policy. The Gramm amendment would cost approximately $740 billion over 10 years and trillions of dollars in the decades after that.

Ironically, the amendment would go into effect at the time the baby boomers will start to retire. So as the number of people drawing on Social Security and Medicare starts to increase dramatically, the Gramm amendment would be draining the funds necessary to support these programs. At a time when we are running budget deficits and Social Security and Medicare funds are being used to pay for other programs, it is not wise to take any action that would threaten the solvency of these programs.

Who would the Gramm amendment benefit? The tax cut passed last year, which I supported, eliminating the tax on estates of less than $3.5 million, and our amendment would extend this provision permanently. By 2009, estates worth less than $4 million would owe no estate tax. There are very few American families who have to worry about having estates of more than $4 million. I only wish there were more of my constituents who had this problem.

In reality, the very wealthiest Americans would benefit from the Gramm amendment, but the programs that middle Americans rely on for their retirement security would be harmed, as would our ability to provide a much-needed prescription drug benefit for seniors.

So the choice is clear. If we want to make sure that parents will be able to pass their businesses and farms down to their children and we want to provide this relief right now, not in 2011, and we want to do this in a way that does not threaten the long-term solvency of Social Security and Medicare, we should vote for the Dorgan-Durbin-Carnahan amendment and against the Gramm amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DORGAN. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The Senator from North Dakota has 19½ minutes. The Senator from Texas has 6 minutes 20 seconds.

Mr. DORGAN. Mr. President, let me make a couple of additional observations, and I suspect the Senator from Texas will wish to conclude his comments after which I will conclude mine.

The Senator from Texas said a while ago that facts are stubborn, and that is true. Facts are also sticky. They tend to hang around a fair amount.

Let me describe a few facts about this debate, and this issue. Despite all of the tap dancing around this issue, our amendment would say to farms and businesses in this country that if you are passed to the kids who will keep running it following the death of the parents, we will repeal the estate tax for that transfer effective next year.

My colleagues have said we would like to repeal it as well, and repeal a lot more for that matter, but we will do that 7 years from now. We will start 7 years from now with our complete repeal.

If it is, in fact, a priority, why would they not do it effective January 1 of next year?

In addition, we have heard some discussion about the fact that this family-owned business exclusion does not work. The fact is, it has been used a fair amount. It is fairly new, but it is interesting to me that the proposal by the Senator from Texas and others last year to repeal the estate tax also repealed in their legislation the family-owned business deduction in 2004. They are the ones who decided that they were going to repeal the family-owned business deduction in 2004.

What they also came up with last year, I suspect we will not hear anyone defend because it is almost the sort of thing that you are going to put in material for comedians.

They came up with a tax plan that says, We will gradually repeal the estate tax from now until the year 2010, at which point it is repealed. In 2011, we will reinstate it. They are saying to the American people, by the way, if anyone has a notion of planning your death, make sure you die in 2010 because that is the only year in the next 10 or so years when there is a complete repeal of the estate tax.

I don't know what pencils they used. I don't know what assistance they had or consulting advice they received when in a closed and dark room someplace they decided to repeal the estate tax gradually over 10 years and then bring it back in the 11th year. And, by the way, in doing so, we will in 3 years——

Mr. KYL. I say to the Senator from North Dakota——

The PRESIDING OFFICER. The Senator from North Dakota has the floor.

Mr. KYL. The Senator from North Dakota suggested this was done in a dark room.

The PRESIDING OFFICER. Does the Senator yield?

Mr. DORGAN. Let me say by unanimous consent, the room was not dark. The room was not dark.

In addition to creating this comedic approach to tax relief, they decided in 2004 they will repeal the family-owned business deduction. Those who say they are on the floor of the Senate to help family businesses and family farms are the very ones who stuck in their bill last year a repeal of the family-owned business deduction in 2004. You can make one of two points, but not all at the same time. You can say, as they say incorrectly, that the family-owned business deduction does not work. If that is the case, they probably should have repealed immediately. But they are saying it does not work so we will let it continue not to work and repeal it later. I suppose this is also great material for comedy but a pretty poor excuse, in my judgment, for sound tax policy.

Strip away all of the leaves and ask the question, What are the issues? Simply, they are these:

I propose an $8 million unified estate tax exemption for a husband and wife. If you do not have assets equalling $8 million, do not worry, you will never have an estate tax obligation. That is No. 1.

No. 2, I propose a total repeal of the estate tax in 2003 for the passage of a

family business or a farm to the kids who want to continue to run it. If the parents die, and the kids want to run that operation, I say good for them. The last thing in the world we want to do is interrupt that with an estate tax obligation. It is repealed for such businesses, regardless of size. We do that January 1, 2003.

The proposal to repeal the entire estate tax means we are fighting over what is left, No. 1; and, No. 2, we are fighting over when we will give relief to family-owned businesses and family-owned farms.

Last year, they decided to take away in 2004 the family-owned business deduction. Now they are saying they are fighting to help family businesses.

A strange fight, I would say: Try to take away their deduction; you did, in fact, in law, in 2004; and now you want to stage this so they get relief 7 years from today. If it is important, how about relief immediately? How about saying if it is important for businesses and farms to stand up and do it now? That is what my amendment does.

This is bait and switch. We all understand bait and switch and have seen it in stores from time to time. This is bait and switch in legislation.

I will speak at the end about priorities because we have people saying this is the most important thing for us. Yes, we have a big deficit. Yes, we have economic trouble. But our most important priority at this point is providing a repeal of the estate tax for the largest estates in the country? I am talking about estates worth $500 million, $1 billion, $2 billion, $20 billion. That is the biggest priority? That is the highest priority we have in this country? We have Social Security issues, Medicare issues, education issues, a whole series of things we ought to attend to, but the highest priority is providing a repeal of the estate tax for the top estates in the country?

I think not. One of the priority ought to be to do what I do in this amendment: Have a thoughtful exemption, $8 million, husband and wife, below which there will be no estate tax obligation any longer, under any circumstance, and allow almost immediately, on January 1 of next year, the passage or transfer of a family business or family farm to the descendants who want to run the business or farm without an estate tax obligation. That is my amendment.

Do not vote against this amendment and go home and say, by the way, I am the champion of the business and farm that is family owned. This is the way to champion their interests if you want to repeal the estate tax obligation of the transfers, effective January 1.

How much time remains?

The PRESIDING OFFICER. The Senator from North Dakota has 11 minutes.

Mr. DORGAN. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I ask unanimous consent that the quorum call I am about to ask for not be charged against either side.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I ask unanimous consent that upon the disposition of the Dorgan amendment, which should be in the next 15 or 20 minutes, the Conrad amendment be set aside and that Senator GRAMM or his designee be recognized to offer his first-degree amendment, as provided under the parameters of the agreement governing H.R. 8; that upon the conclusion of the debate with respect to the Gramm or designee amendment, the amendment be set aside, and the Senate resume consideration of the Conrad amendment No. 3831, and there be 5 minutes of debate equally divided and controlled in the usual form; that upon the use of time, the Senate vote in relation to the amendment; that upon disposition of the Conrad amendment, the Senate resume consideration of the Gramm amendment, and there be 5 minutes of debate equally divided and controlled in the usual form; that upon the use of time, the Senate proceed to vote in relation to the amendment without further intervening action or debate; and provided further that no other second-degree amendment be in order.

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

Mr. REID. Mr. President, for the information of Members, we are going to have a vote very shortly. Then we will have an approximately 2-hour debate on the Gramm amendment. Then we will have two votes following that. That should end the debate on this matter, I hope, for the day—and for the year, maybe.

I have nothing more to say at this time. I think this is how debate should take place. I have been very satisfied, and I think everyone should be, with the tenor of the debate. The issue has been, and will for the next 2 hours, put at issue, and I wish we had more debates such as this in the Senate. This is very high class.

The PRESIDING OFFICER. Who yields time?

The Senator from Texas.

Mr. GRAMM. How much time do we have remaining?

The PRESIDING OFFICER. The Senator from Texas has 6 minutes 20 seconds.

Mr. GRAMM. And Senator DORGAN?

The PRESIDING OFFICER. The Senator from North Dakota has 11½ minutes.

Mr. GRAMM. I am going to yield 3 minutes 20 seconds to my colleague from Arizona, and then I would like Senator DORGAN to use his time and then I will conclude.

Mr. KYL. Mr. President, I agree with the Senator from Nevada, except for some recent comments made by the Senator from North Dakota when he talked about a comedic approach and a bait-and-switch approach and asked the question: Why would we repeal the death tax and then reinstate it? The Senator knows full well why that was done. We did not do it. Those on his side of the aisle were responsible for that.

The American people need to understand the reason is that, under the rule under which the Tax Reform Act of 1991 was taken up, we could only act for a 10-year period after which our actions were sunsetted. We didn't want that. We wanted to make the death tax repeal permanent, but it was not possible because of opposition from the other side. That is the answer to the question posed by the Senator from North Dakota.

When he asked us, why did you repeal the death tax and then allow it to be reinstated, the answer is: We did not; you did. Now you have a chance to fix it.

We all have a chance now to repeal the death tax permanently. This is the time for people to stand up. Do we really want it repealed? Do we want it repealed permanently? Or were we just kidding when this was done last year?

A lot of Democrats and a lot of Republicans voted, not in a dark room but in this Chamber, a year ago to repeal the death tax. They wanted it repealed permanently. Only because of a parliamentary rule was that not possible. Now it is possible. This is our chance, and the only real repeal is the Gramm-Kyl repeal.

The amendment of the Senator from North Dakota that we will be voting on in just a moment is fatally flawed because, while it makes an unlimited exemption, you have to walk through a gate—in order to get that unlimited exemption—that is closed. Very few, if any, small businesses or farms will be able to qualify. How do we know this? Because the Senator from North Dakota uses the very same qualifying language that is in the existing law.

From the IRS itself we have the numbers of people who qualify out of the over 100,000 estate tax filers. Only a little over 1,000 qualified, even in the year with the largest number. In the first year in 1999, it was 173 people. In that year, 173 estates would get this wonderful relief proposed by the Senator from North Dakota. In 1998, it was 899 people. In the biggest year, 1,400 people would qualify. Of those, IRS is winning two-thirds of the cases with respect to the valuation of the assets.

This is an amendment which has great promise and zero production. As the Senator from Missouri said, you can't make a flat tire roll just by making it bigger. The Dorgan amendment

should be defeated because it cannot provide relief to anybody.

Mr. President, I ask unanimous consent to have printed in the RECORD a paper on interest deductions.

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

QUALIFIED FAMILY-OWNED BUSINESS INTEREST DEDUCTION

Under section 2057, certain ''qualified heirs'' may make an election to deduct the value of certain family-owned business interest from the gross estate. Currently this deduction is $1.3 million. That means if the fair market value of the estate is $10 million, subject to a 50 percent death tax, the QFOBI would reduce the taxable portion of the estate to $8.7 million subject to the same 50 percent tax.

There is a period of up to 12 years in which the IRS can disqualify a QFOBI and impose estate tax plus accrued interest, from the date of death until the recapture event becomes due and owing immediately.

In general, QFOBI's problems can be simply stated. It is unfair (and impractical) for Congress to draw an artificial line as to who will or will not be subject to the death tax.

In other words, QFOBI attempts to draw a line so that some small businesses and farms qualify for a complete exemption from the death tax but others will not be able to avail themselves of any death tax relief. In many cases, those businesses that can spend the most money on death tax planning will be more likely to choose this exemption (that is, in truth, simply a giant loophole).

SUMMARY OF QFOBI

1. To qualify (and stay qualified) for this deduction is difficult.

The decedent was a citizen or resident of the United States at the date of death.

The business interests are includible in the gross estate.

The business interests must have passed to or been acquired by a qualified heir from the decedent.

The adjusted value of the qualified family-owned business interests must exceed 50% of the value of the adjusted gross estate (considered the most complicated requirement of Section 2057 in comments by Professors Roger A. McEowen and Neil E. Hart)

The business interest must be in a trade or business that has its principal place of business in the United States.

The business interest was owned by the decedent during 5 of the 8 years before the decedent's death.

For 5 of the 8 years before the decedent's death, there was material participation by the decedent in the business.

2. To qualify for the deduction, the ''business interest'' must be either an interest as a proprietor in an entity which:

At least 50 percent of the entity is owned by the decedent or members of the decedent's family;

At least 70 percent of the entity is owned by members of two families, and at least 30 percent is owned by the decedent or members of the decedent's family; or

At least 90 percent of the entity is owned by members of three families, and at least 30 percent is owned by the decedent or members of the decedent's family.

However, there are additional limitations to the general rules regarding a ''qualified family-owned business interest'':

(QFOBI) shall not include the following:

Any interest in a trade or business if its principal place of business is located outside the United States.

Any interest in an entity if the stock or debt of the entity (or a controlled group of which the entity is a member) was readily tradable on an established securities market or secondary market at any time within 3 years of the date of the decedent's death.

Any interest in a trade or business (excluding banks and domestic building and loan associations) if more than 35 percent of its adjusted ordinary gross income for the taxable year that includes the date of the decedent's death would qualify as personal holding company income if such trade or business was a corporation.

The portion of an interest in a trade or business that is attributable to:

Cash and/or marketable securities in excess of the reasonably expected day-to-day working capital needs, and

Any other assets (other than assets held in the active conduct of a bank or domestic building and loan) that produce or are held for the production of personal holding company income and most types of foreign personal holding company income.

3. To be a ''qualified heir'':

A person is a ''qualified heir'' of property if he or she is a member of the decedent's family and acquired or received the interest form the decedent.

The qualified heir must continue to materially participate in the family business for next 10 years.

4. To ''materially participate''

The existence of material participation is a factual determination (in other words open to aggressive challenges by IRS and almost certain litigation), and the types of activities and financial risks that will support a finding of material participation will vary with the mode of ownership. No single factor is determinative of the presence of material participation, but physical work and participation in management decisions are the principal factors to be considered. Passively collecting rents, salaries, draws, dividends, or other income from the trade or business does not constitute material participation. Neither does merely advancing capital and reviewing business plans and financial reports each business year.

5. Forfeiture of QFOBI status and 10-year Recapture Period:

Section 2057 imposes an additional estate tax when there is a taxable event. A taxable event occurs if, within 10 years of the decedent's death and before the qualified heir's death, one of the following events occurs:

The qualified heir disposes of any portion of his or her interest in the qualified family-owned business, other than by a disposition to a member of the qualified heir's family or through a qualified conservation contribution under section 170(h);

The qualified heir ceases to meet material participation requirements (i.e., if neither the qualified heir nor any member of his or her family has materially participated in the trade or business for at least 10 year period;

The principal place of business of the qualified family-owned business ceases to be located in the United States (This includes bankruptcy or foreclosure!!!);

The qualified heir loses United States citizenship and neither a qualified trust was created nor was a security arrangement made.

As under section 2032A, the 10-year recapture period may be extended for a period of up to 2 years if the qualified heir does not begin to use the property for a period of up to 2 years after the decedent's death.

6. Criticisms of QFOBI

Currently, we have a $1 million exemption that can not be combined with the $1.3 million QFOBI deduction. Confronted with all of QFOBI's complexities and pitfalls, taxpayers simply choose to submit themselves to it in order to obtain an additional $300,000 deduction. Less than three percent of eligible small businesses have used it (don't have cite.) IRS Economist Jacob Mikow documents in a letter that for filing year 2000 a total of 108,322 estate tax returns were filed. A mere, 1,470 of those returns made the QFOBI election.

Tax lien. For 10 years the IRS has a first position lien on all of the business/farm assets, which means when the family applies for an operating loan so it can ''materially participate'', the bank has to take a second position. A second position is considered an ''at risk'' loan and the family then has to pay 2 to 3 points higher on their operating loan every year for 10 years. This is probably the biggest impediment to facilitating liquidity during the consideration.

QFOBI does not exempt ''generation skipping tax'' (GST). So a decedent can utilize QFOBI to leave his family business/farm to his grandson (subject to all of the QFOBI constraints and limitations) and not pay the death taxes, but the decedent's estate would still have to pay GST tax of 50 percent. Effectively this prevents taxpayers from utilizing QFOBI to turn over the family business/farm to any one but their sons and daughters, who may not be the best suited for the job.

Ownership requirement is the last 5 out of 8 years prior to death. There is not an exception for normal course of business turn over, such as estates with heavy crops or livestock or inventory values. This severely complicates farm planning. For example, the life expectancy of a chicken is probably less then 8 years much less the life expectancy of a potato crop—So there is no ability to lose a chicken and to replace a chicken and to be able to substitute the ownership period.

Sales in the ordinary course of business create a recapture event as there is not a safe harbor on the sale of a crop-inventory or of livestock during the 10 material participation requirement. So if you sold a widget or a chicken or an ear of corn you would owe not only income tax but estate tax.

50 percent ownership requirement has a lookback period which includes gifts to spouses—so if you balanced an estate to get both unified credits you could lose the QFOBI.

Recapture provision for over 10 years can disproportionately hurt those businesses and farms that suffer during an economic downturn. For example, in year one, the business might be doing well, but seven years later must file for bankruptcy protection, despite the fact that it plans to reorganize and continue operations in the future. In that event, the QFOBI would terminate and the death tax, plus interest accrued for the past seven years would be due and owing immediately. That fact alone might prevent the company from successfully recovering from bankruptcy.

Cost, expense and uncertainty of setting up an QFOBI is very high and never ending. The tax code is complicated enough and we should work to reduce its complexity, not pursue winners and loser type death tax reform.

ABA and many other non partisan institutions have urged repeal of this provision and cautioned against its use, suggesting that it may border on the line of legal malpractice.

Look at how hard it had been for the opponents of repeal to devise workable QFOBI legislation. No bills have been introduced and we only today saw their proposal to try to convince the American people that we can fix the unfixable.

The PRESIDING OFFICER. Who yields time?

The Senator from Texas.

Mr. GRAMM. Mr. President, let me repeat those facts very briefly because facts are persistent things. In 1999,

104,000 American families filed a death tax return, with 45,000 of them ended up paying a death tax. Only 889 qualified for the exemption that would be expanded by this amendment.

In the last 5 years, of the people who would have qualified for this and all the other exemptions, only 33 of them have been farmers and ranchers.

So as I said earlier, this amendment provides a political figleaf for Senators who are going to vote against a permanent repeal of the death tax and who are using this to cover themselves. It is going to provide political protection for more Senators than it is going to provide tax relief for farmers and ranchers in America. Some 40 Senators will get the figleaf of protection. Some 33 farmers and ranchers in 5 years have gotten relief from all of these provisions.

I think this is a clear choice. The Senator complains that the tax cut is temporary. Why? Because we did not have 60 votes; because the Democrats opposed the President's tax cut in overwhelming numbers. They had the ability to filibuster. The only way we could get the tax cut adopted was to use a procedure that required that the tax cut expire after 10 years. Now the Senator from North Dakota is attacking us for a provision that exists because the Democrats would have filibustered the tax cut.

When we voted, I assumed we meant to repeal the death tax. People said they did. Now we have come down to doing it. There is only one real repeal. That is the amendment I am going to offer with Senator KYL. We are going to raise a budget point of order against this amendment. It will require 60 votes to overcome it. The same point of order will be raised against our amendment. I urge those who voted for the tax cut to vote to sustain this point of order so we can have a real repeal, something for which they voted.

Second, I urge people who did not vote for the tax cut to look at the absurdity of having a situation where 11 years from now this death tax is going to come out of the grave and prey on family businesses and force people to sell off the life work of their family to give the Government a 55-percent tax on everything they have accumulated in their lives.

The National Federation of Independent Business is faxing me a letter right now opposing this amendment, saying it does not solve the problem. I will have that letter printed in the RECORD. I have the letter before me. I ask unanimous consent it be printed in the RECORD.

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

NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,
Washington, DC, June 12, 2002.

NFIB RELEASES STATEMENT ON DORGAN DEATH-TAX AMENDMENT

NFIB Senior Vice President Dan Danner today released the following statement about an amendment offered by U.S. Senator Byron Dorgan (N.D.) that would not provide a full and permanent death-tax repeal:

''Senator Dorgan's amendment does not meet the one requirement that NFIB members have demanded on this issue: a full repeal of this onerous tax. The only proposal on the table that will permanently and fully fix this problem is the Gramm-Kyl amendment.

''Senator Dorgan's approach operates on a false assumption—that small-business owners can easily plan for the death tax. History has proven that exemptions, half-measures and carve outs just do not help real-world small businesses. The existing 'small business' exemption that was enacted in 1997 has only helped 3 percent of those it was intended to help. Senator Dorgan's amendment, which is based on this same idea, will only bring us back to the same roadblocks again.''

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KYL. Mr. President, if I can have the attention of the Senator from North Dakota, I ask unanimous consent to have printed in the RECORD a compilation of provisions of the so-called QFOBI tax provision that illustrate how that is calculated and administered.

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

SECTION 2057—QUALIFIED FAMILY-OWNED BUSINESS INTERESTS DEDUCTIONS

(Prepared by Sirote & Permutt, May 9, 2002)

I. ESTATES TO WHICH SECTION 2057 APPLIES

Section 2057 applies to an estate if:

1. The decedent, at the time of death, was a citizen or resident of the United States;

2. The executor makes an election and files an agreement consenting to the imposition of recapture tax;

3. The sum of the QFOBIs passing to qualified heirs, plus the amount of includible gifts of QFOBIs exceed 50 percent of the decedent's adjusted gross estate. In other words, the following numerator divided by the following denominator must exceed ½.

a. Numerator.

(i) Aggregate the value of all QFOBIs that are included in the decedent's gross estate and that are acquired by a ''qualified heir'' from, or passed to a ''qualified heir'' from, the decedent.

(a) A ''qualified heir'' is a ''member of the decedent's family'' and also includes any employee who has been active in the trade or business to which the family owned business interests relates for ten (10) years prior to decedent's death. (Note that this definition does not require that the employee be employed by the family business itself.)

(b) A ''member of the decedent's family'' includes (a) an ancestor of the decedent, (b) the spouse of the decedent, (c) lineal descendants of the decedent, the decedent's spouse, or the decedent's parents, or (d) the spouse of any descendant described in (c).

(ii) Add ''adjusted taxable gifts'' and annual exclusion gifts of QFOBIs given to family members, if such interests are continuously held by the family member (other than the decedent's spouse) between the date of the gift and the date of decedent's death.

(a) ''Adjusted taxable gifts'' are taxable gifts made by the decedent after 1976 that are includible in the decedent's gross estate.

(iii) Subtract the amount of gifts of QFOBIs included in the decedent's estate.

(iv) Subtract the cash or marketable securities that exceed the reasonably expected day-to-day working capital needs of the business.

(v) Subtract any personal holding company-type assets owned by the business.

(vi) Subtract any of the indebtedness of the decedent on property that is included in the decedent's gross estate, except

(a) qualified acquisition indebtedness for personal residences;

(b) debt if the proceeds were used to pay education or medical expenses of the decedent, the decedent's spouse, or the decedent's dependents; and

(c) debt up to $10,000 used for any purpose.

b. Denominator.

(i) Determine the value of the decedent's gross estate without regard to Section 2057.

(ii) Subtract any indebtedness of decedent on property that is included in the decedent's gross estate.

(iii) Add the amount of adjusted taxable gifts and annual exclusion gifts of QFOBIs given to family members if such interests are continuously held by the family member from the date of the gift to the date of death.

(iv) Subtract gifts of QFOBIs included in the decedent's gross estate.

(v) Add other gifts not included in c above and made by the decedent to the decedent's spouse within 10 years of decedent's death.

(vi) Add the amount of other gifts not included under c or e above made by the decedent within 3 years of death. In other words, add gifts covered by the annual gift tax exclusion and any other non-taxable gifts made by decedent within 3 years of death.

(vii) Subtract the amount of gifts otherwise includible in the decedent's gross estate.

c. The numerator divided by the denominator must exceed ½ in order for Section 2057 to apply.

4. Material Participation Exists

a. The decedent of a ''member of the decedent's family'' must have owned the qualified business interests and have ''materially participated'' in the operation of the business to which such interests relate for 5 of the 8 years prior to decedent's death.

b. ''Material participation'' is determined on a factual case-by-case basis that examines the type of activities in which that person was involved, the financial risks associated with these activities, and the mode of ownership of the property itself.

c. A ''member of the decedent's family'' includes (a) an ancestor of the decedent, (b) the spouse of the decedent, (c) lineal descendants of the decedent, the decedent's spouse, or the decedent's parents, or (d) the spouse of any descendent in (c).

d. If the decedent becomes disabled or starts receiving social security benefits, the 8 year period is the 8 years immediately preceding the date of disability or the date of the receipt of the first social security check.

II. ADDITIONAL TAX IMPOSED IF DECEDENTS HEIRS CEASE TO MATERIALLY PARTICIPATE IN THE QUALIFIED FAMILY-OWNED BUSINESS OR DISPOSE OF THEIR INTEREST THEREIN

1. Section 2057 imposes an additional estate tax if, within 10 years after the date of the decedent's death, any one of certain recapture events occurs, as follows: (1) an heir receiving a QFOBI does not continue to materially participate in the business for 5 or more years of any 8 year period in the 10 years following the decedent's death; (2) the qualified heir disposes of his or her interest to anyone other than other than members of his or her family or through a qualified conservation contribution; (3) the qualified heir loses United States citizenship and does not hold his or her interest through a domestic trust having at least one United States trustee, or (4) the principal place of business ceases to be located in the United States. With respect to a qualified heir, ''material participation'' will be met if the qualified

heir is a surviving spouse, minor child, student or disabled heir who actively manages the business. Furthermore, a qualified heir will not be treated as disposing of an interest by reason of ceasing to be engaged in a trade or business so long as the QFOBI interest is used in a trade or business by any member of the qualified heir's family.

2. This additional estate tax is equal to the applicable percentage of the adjusted tax difference attribute to the QFOBI, plus interest at the underpayment rate for the period beginning when the estate tax liability was originally due and ending on the date the additional estate tax is due. The adjusted tax difference attributable to the QFOBI is calculated as the difference between the estate tax which would have been due but for the election to deduct the family owned business interest under 2057 and the actual estate tax paid. The applicable percentage is determined with reference to the year in which the recapture event occurred, as follows:

	Applicable Percentage
Number of years after date of death:	
1 through 6	100
7	80
8	60
9	40
10	20

a. The additional estate tax is a personal liability of each qualified heir to the extent of the portion of additional tax that is imposed with respect to his or her interest in the QFOBI.

b. For example, Brother and Sister each inherited 50 percent of the qualified family-owned business from their mother. Their mother's estate saved $400,000 in estate tax using 2057. Brother did not materially participate in the business, but Sister did, thereby meeting the material participation test to qualify under 2057. During year 8, Sister sold her interest in the business to someone other than a member of her family, causing a recapture event to occur. Of the $400,000 tax savings, 60 percent or $240,000 must be recaptured with interest. Brother and Sister each owes half of the additional estate tax due.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, we are now told that this circumstance of having an estate tax repeal, engineered by my colleague from Texas and others last year, that steps up a repeal over 10 years, repeals the estate tax, then brings it back into force in 2011, is something that the Democrats made them do.

It reminds me of Flip Wilson; remember that? ''The Devil made me do it.''

The reason we have this comical circumstance of a bill last year, proposed by my colleagues over there, that intends to repeal on a graduated basis the estate tax to a final repeal in 2010, and then bring it back into force in 2011, is not because someone on this side of the aisle made them do it. It is because their numbers didn't add up and they knew they didn't add up. That is why it exists.

After that bill was passed, people were asking the question: What kind of a Congress passes a piece of legislation that says, oh, by the way, there is only 1 year in which you can die in the next decade or so and be exempt from the estate tax; that is, 2010? If it is 2009, you are taxable. If it is 2011, you are taxable. Now we hear this old, ''The devil made us do it.'' That doesn't quite fit.

C. Northcote Parkinson wrote Parkinson's law that I studied when I was in graduate school. It is a fascinating set of laws.

He said at one point that in every organization there is at least one person who is invariably 100 percent wrong. He said someone like that can be valuable because then you will always know who will give you the wrong advice.

I am not going to suggest anything about my colleagues with that except to say this: There are occasions on the floor of the Senate when the advice we receive is just flat wrong.

This question of trying to help businesses and farms that are owned by families to be passed on to the descendants—to the kids—to be able to continue operating them is an interesting one.

The only way we are going to immediately repeal the estate tax on passage of a family farm or business to the kids upon the parents' death is if we pass the amendment I offered today. That is the only circumstance in which that is going to happen, on January 1, 2003.

My colleague from Texas will offer his proposal which will make it happen over the next 7 years, but not now.

It is interesting. My colleague from Illinois talked about who the beneficiaries are. After all, we say no husband and wife with assets of less than $8 million will ever pay an estate tax. That is in my amendment. And no family business passed on to kids will pay an estate tax at all if the kids continue to run it. That is in my amendment. The question is, Who will benefit by defeating my amendment and embracing the proposal by my colleagues from Texas and Arizona? Who will benefit?

My colleague from Texas has no doubt heard me from time to time refer to Bob Wills and the Texas Playboys, the famous Texas band in the 1930s. In the lyrics in their song, the little guy picks the cotton and the big guy gets the honey; the little honeybee sucks the blossom and the big bee gets the honey.

This is about honey and money. And it is about the way it always works somehow on the floor of the Senate.

Guess who benefits. It is not in most cases folks at the bottom of the economic ladder, or even in the middle of the economic ladder, who are the beneficiaries. It somehow always seems to me that the proposals here—especially this type of proposal—offer the circumstance where we say, Let us provide a tax cut for the wealthiest Americans.

What are our priorities? Are our priorities education, strengthening America's schools, investing in Social Security? Are our priorities strengthening Medicare? Are they providing a tax cut for middle-income taxpayers. Are our priorities providing a tax cut and deduction for being able to send your kid to college or providing health care benefits for you and your workers and your business? Are those our priorities? No.

My colleagues say that is not a priority of ours. Those priorities must take a backseat to the priority of providing estate tax relief for the very wealthiest in America.

This isn't about being opposed to those who are wealthy. In my proposal in this amendment, there is a very substantial estate tax exemption of $8 million. If you are trying to pass a family business or farm on to the kids who are going to run it, you are not going to pay an estate tax. That repeal is effective next January 1.

My colleagues say: No. We support this issue of helping farms and businesses, but we support helping them 7 years from now. We have used that as the pole-vaulting contest to get to the point where we can repeal the estate tax, but it is not so important to us that we believe on January 1 of next year businesses and farms passed on to the kids ought to have the estate tax repealed.

It is not that important to them. It is important to me. And I believe very much that we ought to pass this amendment. We voted on this amendment last year. Times have changed, as you know. Things are quite different. My amendment last year got 43 votes.

Last year, just prior to this time, we were on the floor of the Senate, and we had estimated budget surpluses as far as the eye could see. We had people on the floor of the Senate saying: We will have budget surpluses year after year. Let us provide very large tax cuts.

Some of us said: Maybe we ought not do that. Maybe we ought to be a bit conservative. What if something happens?

Guess what happened. In a matter of 7 or 8 months we ran into a recession, and then we had a war. The result is that our economy faltered. These big surpluses turned into big deficits.

But it didn't mean a thing to those who are marching towards estate tax repeal. They are back here on the floor of the Senate as if nothing happened. It is just as if they have missed the last year and our priority remains to try to lift the burden of taxes from those who are at the top end of the income ladder in this country. If you have $1 billion, our priority remains that we believe in tax cuts for you, and we are here to fight for you.

Is there anybody here who is willing to fight for the people at the bottom of the economic ladder? Is anybody proposing a tax cut this afternoon for middle-income taxpayers trying to send there kids to school? I don't think so. That is not the priority.

That is why I hope we will pass our amendment. This amendment says, yes, let us provide dramatic increases in the exemption for the estate tax, and let us exempt the tax in the transfer of the family farms and businesses to the kids who want to run them; but let us not give up the opportunity for a couple hundred billion dollars in the

second 10 years that might be used to help America's kids and schools, help strengthen Social Security, help strengthen Medicare, and do the things that will also make this a better country.

I hope my colleagues will understand that the only way to address this issue of family farms and businesses that we have heard so much about is this amendment.

One final point: My colleagues have talked about the family-owned business deduction not working. It is interesting to me. In fact, they repealed it in law last year. They said, let us repeal the family-owned business deduction. That was their bill last year. They did it in 2004, which is a complete contradiction. If it didn't work, why wouldn't you repeal it immediately? If it does work, why do you repeal it in 2004? It does work, and they know it. They simply allege that it doesn't work so they can try to defeat this amendment and provide relief for the people with the highest incomes at a time when this country is in debt and is going deeper in debt. Their proposal doesn't have as a priority to help on the other things that are important—health care, Social Security, education, and much more. We will get to those things by casting some sensible votes this afternoon on this amendment.

Support this amendment, oppose the Gramm amendment, and do the right thing.

I yield the remainder of the time.

The PRESIDING OFFICER. All time has expired.

Mr. GRAMM. Mr. President, as provided for in the unanimous consent agreement, I make a point of order under section 311 of the Budget Act against the pending Dorgan amendment.

Mr. DORGAN. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for the purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Idaho (Mr. CRAPO) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''no.''

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

The yeas and nays resulted—yeas 44, nays 54, as follows:

[Rollcall Vote No. 149 Leg.]

YEAS—44

Akaka	Biden	Breaux
Bayh	Boxer	Byrd
Cantwell	Harkin	Mikulski
Carnahan	Hollings	Nelson (FL)
Collins	Inouye	Reed
Conrad	Jeffords	Reid
Corzine	Johnson	Rockefeller
Daschle	Kennedy	Sarbanes
Dayton	Kerry	Schumer
Dodd	Kohl	Snowe
Dorgan	Landrieu	Specter
Durbin	Leahy	Stabenow
Edwards	Levin	Torricelli
Feinstein	Lieberman	Wellstone
Graham	McCain	

NAYS—54

Allard	Ensign	Miller
Allen	Enzi	Murkowski
Baucus	Feingold	Murray
Bennett	Fitzgerald	Nelson (NE)
Bingaman	Frist	Nickles
Bond	Gramm	Roberts
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Shelby
Campbell	Hatch	Smith (NH)
Carper	Hutchinson	Smith (OR)
Chafee	Hutchison	Stevens
Cleland	Inhofe	Thomas
Clinton	Kyl	Thompson
Cochran	Lincoln	Thurmond
Craig	Lott	Voinovich
DeWine	Lugar	Warner
Domenici	McConnell	Wyden

NOT VOTING—2

Crapo	Helms

The PRESIDING OFFICER. On this vote, the yeas are 44, the nays are 54. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

The majority leader is recognized.

Mr. DASCHLE. Mr. President, I appreciate the work that is being done. In the interest of all colleagues, let me simply make sure that people understand that we have a debate on another amendment. Under the unanimous consent agreement, the debate can last up to 2 hours. It would be my expectation, after completion of the debate on the next amendment, the Gramm amendment, we will then vote on the Conrad amendment and the Gramm amendment back to back. It is then my hope that we can have a vote on a point of order that will take place either immediately or shortly thereafter.

In the meantime, we are still discussing the matter of stem cell research and cloning and a unanimous consent request there, as well as a hope that I have that we can move to terrorism insurance legislation. I just indicated to Senator LOTT that it would be my desire to move to the terrorism insurance legislation immediately following either the debate on stem cell or the debate on the estate tax legislation.

So it is my intention to ask unanimous consent to move forward on both of those issues. It is my understanding that some of my colleagues wish to have a little additional time. So before I propound a request on either one of those issues, we will certainly be happy to accommodate the request of our colleagues. But I want people to be on notice that it is our intention to file a unanimous consent request on terrorism insurance, as well as on the stem cell cloning debate. That is with an understanding that Senator LOTT just noted. I had been told there was some interest in filing cloture on the motion to proceed on defense. Senator LOTT has indicated to me that is not the case. So I will not propound these requests with that understanding.

I yield the floor.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. LOTT. Mr. President, I have been working with the interested Senators on this issue of cloning, trying to see if we can get a unanimous consent agreement. We are continuing to do that.

With regard to the terrorism insurance bill, if we don't get an agreement on cloning, it is my hope that we can get an agreement to proceed with the terrorism issue. There are a couple of points that need to be clarified, and we are discussing those now. We will, hopefully, get an agreement on one, or perhaps both, of those issues. We will continue to work on that.

Mr. DASCHLE. Mr. President, I may have misspoke. I indicated there are going to be two votes at the end of two hours. That will complete the debate on the estate tax issue: the completion of the debate on the amendment now to be offered by Senator GRAMM, and then the vote on the amendment offered by Senator CONRAD. We will determine what the course of business will be subject to the discussions underway on both terrorism insurance and the stem cell cloning debate as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

AMENDMENT NO. 3833

Mr. GRAMM. Mr. President, I send an amendment to the desk on behalf of myself, Senator KYL, Senator BROWNBACK, Senator NICKLES, and Senator HUTCHISON.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM], for himself, Mr. KYL, Mr. BROWNBACK, Mr. NICKLES, and Mrs. HUTCHISON, proposes an amendment numbered 3833.

Mr. GRAMM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To permanently repeal the death tax)

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Permanent Death Tax Repeal Act of 2002''.

SEC. 2. ESTATE TAX REPEAL MADE PERMANENT.

(a) IN GENERAL.—Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended—

(1) in subsection (a) by striking ''shall not apply—'' and all that follows and inserting ''(other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.'', and

(2) in subsection (b) by striking '', estates, gifts, and transfers''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

Mr. GRAMM. Mr. President, I have sent to the desk the real repeal of the death tax. This amendment is identical to the language that was adopted in the House of Representatives last week.

Current law phases in the elimination of the death tax and then, due to the limitations of the Budget Act, the death tax rises up out of the grave in 2011 and starts destroying family businesses, family farms, and family dreams in 2011. What our amendment does is makes the repeal of the death tax permanent.

I want to touch on a couple of issues, and then I want to yield to some of my colleagues who want to speak.

I remind my colleagues that when we passed the tax bill, we had 58 votes. It would have taken 60 votes to have made the tax cut permanent by waiving the provisions of the Budget Act. We only had 58 votes. We have this anomaly that the death tax rises out of the grave because we only had 58 people who supported the tax cut.

I believe everybody who voted for that tax cut was committed to the principle that we were repealing the death tax. Today we have an opportunity—the first real opportunity—to achieve that goal.

I remind my colleagues that in the year that the repeal would go into effect, which would be 2011, we are projected by the latest Congressional Budget Office estimate to have a $450 billion surplus. Our Democrat colleagues say they would like to make it permanent, but we cannot afford it. I remind my colleagues, when it would go into effect, under current estimates, we would have a $450 billion surplus. What they are really saying is they want to spend the money rather than letting people keep their farm, keep their business, keep their dream.

We have heard throughout this debate Member after Member get up and say that this repeal will take money away from the Treasury and that they are very worried about the debt and the deficit. Not once, twice, three, four, or five times, but six times in the last 9 months we have increased spending many times more than would be required to pay for the repeal of the death tax.

In nonrequested, nonemergency funding in the emergency appropriations bill, items the President did not ask for, we spent four times as much as it would take to fund the repeal of the death tax next year.

In total, in the last 9 months, the same people who are saying we cannot afford to make this repeal permanent have voted for 15 times more spending next year than the cost of repealing the death tax. These are the same colleagues who have 100 different taxes that ought to be increased, 41 different tax cuts that ought to be taken back, but they do not have one single idea about how we could control spending.

In reality, this is a very simple debate. When you cut through to the bottom line, it is a debate about priorities. Those who are opposed to making the tax cut permanent are basically saying: We are willing to force people to sell their business and sell their farm, tax a family at the moment of death and take away the life work of their parents so that Government can spend more money. That is what this is about.

Are you willing to take away somebody's farm, somebody's business, somebody's dream so Government can go on spending as usual? I am not. This is a clear-cut issue, and it is a question of right and wrong. It is not right for people to work a lifetime, pay taxes on every dollar they earn, scrimp, save, sacrifice, plow that money into a business, plow it into a farm, work 12 or 14 hours a day, and then when they die their children have to sell their life's work to pay a tax on income that has already been taxed. It is fundamentally wrong. This is a moral issue, not just a tax issue or an economic issue.

I urge my colleagues to vote to make the death tax repeal permanent. If the people who voted for the tax cut and if the people who voted for the sense-of-the-Senate resolution earlier this year are saying we ought to make the death tax repeal permanent voted for this amendment, we would succeed.

I urge my colleagues to take away this tax on farms, ranches, businesses, and dreams by making the repeal of the death tax permanent.

I yield 5 minutes to the Senator from Texas, Mrs. HUTCHISON.

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

Mrs. HUTCHISON. I thank the Chair.

Mr. President, I thank the senior Senator from Texas for sponsoring this amendment. The Senate has passed the death tax repeal. We are trying to make it permanent. In fact, it was a year ago this month that we passed the bill that would provide urgently needed tax relief for Americans, but now we want to finish this job and make it permanent so people can plan for their futures.

Why is it important to permanently repeal this tax? Because it punishes people for saving. Everyone pays taxes on the money they earn, but then we all have a choice: We can spend the money or we can save it. Some may choose to take a vacation or buy a new car. There is nothing wrong with that. That is their choice. It is their money. But others will invest it for retirement, plow it into their family farm or ranch, or invest it in the family business, creating new jobs and keeping our economy going.

All of these people want to pass their savings to their children. In the end, they have put off enjoying the money they worked hard to earn in order to build a more secure future for their children.

There is an old saying that the key to wealth is not how much you earn but how much you do not spend. These people chose savings over consumption. This is something we should encourage and support, but with the death tax, when they die, the Government takes up to 55 percent of what they saved. This is wrong, and Americans know it.

Three out of four voters would like to see the estate tax eliminated. This overwhelming support exists because the American people understand this tax is unfair, inefficient, and bad policy. More important, the people of our country seek the American dream of improving their lives and the lives of their children, and they know this tax works against that.

People who want to keep the death tax argue that it only affects a small percentage of the population, but they miss the point. It is not a matter of how many are affected but whether it is right or wrong, and the death tax is clearly wrong.

I told a story a few years ago about the family of David Langford of San Antonio. It is not a story; it is true. Mr. Langford's mother passed away in 1993 and, as a result, he faced a tax liability of more than $400,000 because two of the ranches that had been in their family for over five generations had, of course, increased in value.

They had been in the family for over 100 years.

One happens to be in the hill country of Texas, which Texans know is one of the most beautiful parts of our State and the prices have gone out of sight.

In order to pay the taxes and keep the ranches for his family, Mr. Langford had to sell his mother's house, his own house, and many personal assets, as well as move into a small condominium and borrow $190,000. But that was not the end. The Langfords spent 5 years trying to reach an agreement with the IRS that would bring down the fair market value of the properties. They settled with the IRS for $415,000. The Langfords had spent $70,000 in attorney's fees associated with dealing with the IRS.

So in 2001, to cover the costs, Mr. Langford had to sell the condo and one of the farms in McMullen County, a ranch that had been in his family for five generations.

Now the Langfords wonder if they will be able to pass the Kendall County property, the other farm which has been in the family for seven generations, to his children. He jokes that if he dies in 2010 his family can keep the ranch, but they will not be able to keep it if he lives past 2010.

This is not a joke. This is a situation families across America will face. We must eliminate the death tax so that regular people, such as David Langford, can pass on their treasures from their families to their children. I think his family has more than paid their fair

share to the U.S. Government, having to sell a farm that had been in the family for over 100 years.

Then there is Debbie Gillan, who struggled to keep her family's ranch after her uncle and father passed away, and now she wants to try to keep it for her two sons.

Afton Pumps employs 60 people in Houston, TX. It is a small family-owned business, but it does not generate enough cash to cover the potential death tax liability to make it to the next generation. In fact, it is said that less than 50 percent of family businesses can survive the second generation, and less than 20 percent the third generation.

I ask the Senator from Texas if I could have an additional 2 minutes?

Mr. GRAMM. I yield the Senator an additional 2 minutes.

The PRESIDING OFFICER. The Senator has an additional 2 minutes.

Mrs. HUTCHISON. If we are going to eliminate these family-owned businesses, it does not affect only the family, it also affects the people who work at places such as Afton Pumps because if they have to sell to pay for death taxes or they have to sell the property, there is a good chance those jobs are going to be eliminated, assuming they can sell it at all.

In fact, one of the really sad things is the death tax is really a tax on asset-heavy, low-producing properties because many times these heavy assets have to be sold. They have to be sold at fire sale prices so the true value is not gained from the property, and then one has to come up with the money to pay the inheritance tax. It really is not a fair tax. It affects a lot of regular people, people in a situation where something was purchased at very low cost, but they have built it or their families have built it. They have a right to keep it. It was earned with the hard labor of their family, and they should be able to pass it to their children.

I think this tax really came into being as extra income in time of war, but it was never repealed because the Government got hungry for more and more social programs. This is not a fair tax and we need to eliminate it so the people of our country can plan for their children's futures, so they will not have to do crazy things to try to protect property or businesses or assets that have been in their families for generations. This is not the American way.

I yield the floor.

Mr. REED. Mr. President, I yield myself 10 minutes of the opposition time.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized for 10 minutes.

Mr. REED. Mr. President, this is a very auspicious moment in our history, not just this debate in the Senate but the fact that we are in the midst of a war with extraordinary demands, fiscal demands as well as demands of patriotism, on the country.

Yesterday we raised the debt limit. We are in a situation where there are efforts to fund worthy programs that are supported on both sides. First, of course, is national security, homeland defense, but also an educational proposal that the President championed. Yet at this time, we are considering the total repeal of the estate tax.

A great deal of the discussion is rhetorical. I think it is useful to point out some of the facts with respect to the estate tax. First, no estate less than $1 million is taxed at all today, which excludes the vast majority of Americans. In fact, if most Americans are asked what they are worried about at the end of their days, it is not the estate tax. It is paying for long-term care. It is affording a nursing home without having to sell their home or dig deeply into their savings. That is what most Americans worry about. They are not worried about the estate tax. Ninety-eight percent of estates pay no estate taxes at all.

In 1999, fewer than 49,000 out of 2.3 million estates—that is only 2.1 percent—paid any estate taxes whatsoever. This percentage is projected to drop as the exemption rises from $650,000 in 1999 to $3.5 million in the year 2009. Now, the estate tax repeal will benefit some Americans, very few Americans, and the wealthiest Americans. Estates larger than $5 million paid half of all estate taxes, and if we look at the 467 largest estates, worth at least $20 million, they paid nearly one-quarter of the estate taxes paid. So this is a benefit that will not be fairly shared by all Americans. It will be significantly shared by very wealthy Americans.

Now it should be pointed out, too, that no estate tax is paid if a spouse survives. That spouse does not have to pay estate taxes. Currently, as I indicated, an individual can pass along up to $1 million without estate taxes, and that increases to $3.5 million in the year 2009, and a couple can pass along twice that amount because of the spousal rules.

Furthermore, only a small fraction of taxable estates consisting primarily of family-owned small businesses or farm assets pay estate taxes. This is a topic that receives a lot of rhetorical attention, but the reality is this: In 1999, only 1.4 percent of taxable estates were farm estates, and only 1.1 percent were small businesses. There are already special provisions that are provided for these farms and for these small businesses, such as allowing additional sums to be bequeathed tax free and also deferring payments on taxes for up to 14 years.

Farm estates in 1999 pay only 0.7 percent of all Federal estate taxes collected, and so this is not a crisis of sweeping proportions that is engulfing every farm in America—only very few farms, very wealthy estates. Even among these family-owned farms and small businesses that might actually pay estate taxes, there is scant evidence the tax has a real impact on their operations; that, in fact, they have to sell the farm to pay the taxes or sell the small business to pay the taxes.

One thing that is important to note, a great deal of an estate is made up of unrealized capital gains. The deceased bought property 50 years ago very inexpensively. Today that property is worth a great deal. Under the current system, the heirs get that property with a stepped-up basis and so if they choose to sell the property after they have paid the estate tax or after they have been exempt from the estate tax, they really pay no capital gains whatsoever because significant portions of the property are unrealized capital gains on which no capital gains tax has ever been assessed against the property.

There is another argument that is made by proponents, and that argument is the fact that repealing of capital gains will stimulate economic growth in America, will increase savings, will increase our overall growth. A new report from the Joint Economic Committee and the Democratic staff points out that these claims are exaggerated at best.

Repeal would affect very few families and have very little impact on total capital accumulation in the United States. The tax is very small itself, relative to family net worth. The gross value of taxable estates comprised only 0.3 percent of the total net worth of the household sector, and the estate tax itself claimed less than 0.06 percent. That is what the estate tax claims in terms of the household sector of America. Repeal would have a small, uncertain effect on individuals' private saving. There is no real indication that saving will increase. In fact, it is likely or possible that consumption could increase as people took estimated estate tax payments and decided they were not due any longer under the proposed regime, they would be spent.

It is unclear whether this proposal will increase national saving. Without increased national saving, we will not have the kind of economic growth we want.

This repeal, if enacted, will dramatically and definitely affect the revenues going not just to the Federal Government but to State governments. The Joint Committee on Taxation estimates permanent repeal would cost, in 2012 alone, $56 billion. Others suggest that estimate is rather conservative. There would also be comparable losses at the State level. At a time when we are seeing a deficit situation in the United States, that deficit will be compounded by the loss of the estate tax. It will result in a decrease in public and national saving. As a result, we will not be stimulating the kind of growth we want, for many reasons, including the fact that the purported savings from compliance costs might not be realized either, since most estates, most investors, most people with property will continue, regardless of the estate tax, to plan for the disposition of their assets and engage legal

counsel. The notion that we will save and streamline the cost of providing for the future is not substantiated by the reality of what people do every day.

Now, can we afford to repeal the estate tax? I don't think we can, particularly in a situation where we are seeing the cost likely in the second decade to balloon to $750 billion.

We are considering in the next few weeks legislation both sides support. First, a pharmaceutical benefit for seniors. Will that cost billions of dollars? Yes, it will. Where will that money come from? Right now, it is coming from the Social Security fund and Federal debt if we propose it and pass it. This will make our proposals much more difficult to enact and fund. It is easier to enact than to fund a pharmaceutical benefit. The Department of Defense is proposing a missile defense system supported by both sides. They are reluctant to tell us what the life cycle cost will be over 20 years. Why? Because those costs are likely to be in the hundreds of billions of dollars. Where do we get that money? We are in a deficit now. We will be in a worse situation if we pass the permanent repeal of the estate tax.

We have to recognize that each day we wake up, we encounter a new threat to our national security. Two days ago, the FBI announced they seized a terrorist who was plotting to detonate a radioactive device in the United States, causing us to ask fundamental questions: Are all of our university laboratories with isotopes fully protected? Are all of our reactors, academic and utility reactors, fully protected against theft? That is not an inconsequential cost, but it is a cost we cannot avoid. If we pass this, we will be in a more difficult position to meet those responsibilities.

I urge we reject this approach and adopt the approach suggested by Senator CONRAD that raises the exemption level, making it quite clear and obvious we are not going to penalize those smaller estates, we are not going to penalize the proverbial and somewhat, in many cases, elusive family farms that are threatened by this estate tax. I hope we can do that. I hope we reject this proposal and adopt the Conrad proposal.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

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

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

Mr. DODD. Mr. President, I rise in opposition to the Gramm amendment, total repeal of the estate tax.

Just yesterday, the Senate responded to the President's request to increase the debt ceiling by $450 billion dollars. We are no longer retiring debt and reducing our indebtedness, we are increasing it. The surplus is gone. The President's own budget advisors project deficits for the foreseeable future. And yet, the President is calling on the Congress to permanently repeal a particular tax.

The cost of repealing the estate tax is not inconsiderable. The cost is $99 billion over the next 10 years. In the decade after, the repeal would cost $740 billion. How are we going to pay for this? How is this massive new cost going to be paid for? Are we going to run deeper deficits? Are we going to take it out of the Social Security trust fund? And if so is it wise to drain this fund at the precise time that the baby boom generation is expected to reach retirement age?

There is a war in case anyone has not noticed. It is going to cost money to wage it. And yet we are told that we must repeal the estate tax for the good of the country.

Every day we are getting reports that there will be cut backs on essential services. In places like DC, South Dakota, and many other States children's school days have been shortened. Summer school classes are being cancelled and after school programs are being cancelled. And yet there are those that think that the most important thing we can do as a country, an absolute priority that should prevail over all other priorities, is permanently repealing a tax that is payed by billionaires and multimillionaires.

At a time when we are tying to combat terrorism and we are struggling to educate our children and provide senior citizens with security in their retirement, when we are trying to maintain budget discipline that is so vitally important to our countries long term economic growth. People want to give, they do not want to take from their country at a time like this.

Rarely do Members of the Senate find themselves so short of anything to say. I find myself dumbfound by this suggestion that we totally repeal the estate tax. At other times I might have understood the motivation. Just a year ago, we were talking about close to $6 trillion in surplus over the next 10 years, and if this proposal were brought before the Senate I might have disagreed or objected to it, but perhaps a case could be made with $6 trillion of surplus, the days of a national debt behind us, annual deficits no longer a debate, no longer an issue. With $6 trillion of accumulated surplus, there might be room within that surplus for $740 billion of tax expenditures.

In light of everything that has occurred in the last year, I am truly dumbfounded that we would suggest today that this would even be a close vote. That we would be talking about removing from the wealth of our Nation over the next 20 years close to $800 billion to satisfy a tiny fraction—I mean a tiny fraction—of the American public in light of everything else that has occurred, is truly dumbfounding.

My State, the State that Senator LIEBERMAN and I represent, is often referred to as one of the most affluent States in America on a per capita income basis. One might think in this particular case that I was probably the recipient of a large volume of mail or e-mails, conversations, asking me to vote for the total repeal of an estate tax.

In light of the fact that the people who will benefit the most, the largest number of people as a percentage of the people, would come from the State I represent—I represent 3.5 million people in the State of Connecticut. Out of 3.5 million people whom I represent in the State of Connecticut, 980 people would actually have gross estates that would subject them to the estate tax as it is presently written. My colleagues are certainly aware, I hope the American public is, that we have essentially reformed the estate tax in this country to the point that it only now touches a very tiny percentage of the American public.

So here in one of the most affluent States in the United States on a per capita basis—the State I represent—with a population of 3.5 million people—there are only 980 estates that have gross incomes that would subject them to this tax.

When you factor in the exemptions—for spouses, who do not pay estate tax, for family-owned farms and businesses—the number in Connecticut comes down to 73—73. You start out with 980, but if you take in the exemptions that we have written in we are talking about 73 estates, in the wealthiest State in the Union. And the pricetag, over 20 years, is almost $800 billion.

Maybe people find the word ''dumbfounding'' to be a little harsh, but I do not know what other word you could use than that one, when you consider how much wealth they are going to remove when we need so much. Here we are, a year after the accumulation of great surpluses, already talking about a deficit this year in the neighborhood of $100 to $120 billion, maybe more before we are done.

Right now no one argues with those numbers. That is this year. The President has already announced there will be deficits in every year of his Presidency over the next 3. In fact, many suggest that deficits will now continue for at least 10 years.

So here we are back where we were at the beginning of the 1990s, building up that national debt with annual deficits. In the midst of all of that, 9–11, where we must now respond, as has been said so often by every Member of this Chamber, by the President and others, the world has changed for us fundamentally. It will never be the same again because of what happened on that date.

We are taking steps now, investing resources to make our country stronger, to see to it that we have better protections here at home and abroad. It is an expensive undertaking to do so. In the midst of this expensive undertaking—while simultaneously we also want to invest in the educational needs of our Nation, provide for prescription drug benefits, do what we can to make sure Social Security and Medicare will be there when people need them, invest in the transportation infrastructure which is critically important, a farm bill which we were told was absolutely essential, you go down the list of the things we know we need to invest in to make this country strong and viable—along comes a proposal that will take 3,500 estates in this country and allow them to get a tax break at the expense of everyone else in America. And the cost is roughly $99 billion in the first 10 years or so, and after that, according to the estimates I have seen, $740 billion. Add the two and the price tag is in the $800 billion range. I find it interesting that moments ago we had an opportunity to pass an amendment that would have provided relief to small family farms and businesses for a price tag that is substantially less than a full repeal, and yet many of the Senators who argue that they would like to provide estate tax relief to families and businesses voted no on the amendment.

I do not know how we can go home to our constituencies at a time like this, when we are worried about whether or not we are going to have an intelligence agency, a domestic policing operation, and a reorganization of Government. We are debating in these very hours how we are going to do that, knowing full well it will cost us dearly to do that right—seeing that we have defense structures, seeing that first responders have what they need, God forbid we have another tragedy like we did on September 11. And in the face of all that, I have to explain why it is we are going to provide a total repeal of a proposal—offered by Teddy Roosevelt, by the way. This was not an idea that came out of Franklin Roosevelt, it came out of his cousin, Theodore Roosevelt, the great Republican Progressive President, who argued an estate tax was not only a viable and intelligent revenue source but also had some social benefits.

I don't think it ought to go without mention that some of the wealthiest people in this country are arguing strongly against the Gramm amendment, strongly against the total repeal. People such as Warren Buffett, one of the brightest financial minds in this country, argued strongly against this. John Kluge, who built one of the great fortunes in this country, who was a wonderful genius, argued against this particular proposal. You go down the list. The Gates family argued against this proposal.

I have received five letters—five, out of 3.5 million people in my state, some of the most affluent constituents who are represented in this body at all—saying we ought to totally repeal the estate tax. Even the wealthiest people in this country, who would be the beneficiaries of this, are asking us not to do this. This is fiscally unwise. It is going to cost us dearly.

I was elected to this body 21 years ago. I remember what it was like in the early 1980s. I remember what David Stockman said after he left office. David Stockman, for those who have forgotten who he was, was the Director of the Office of Management and Budget under Ronald Reagan. He argued for significant tax cuts in the early 1980s. They passed, of course. We all know what economic havoc was caused during the 1980s when we had mounting deficits and a national debt that almost quadrupled in the space of 10 years. David Stockman, to his credit, wrote a book called ''The Triumph Of Politics.'' I don't have it with me today, but I urge the younger generation to read it. Remember the admonition, if you want to avoid repeating mistakes, read a little bit about previous mistakes, study history. David Stockman recites chapter and verse about the mistakes made with a proposal we couldn't afford.

Pat Moynihan, then-chairman of the Finance Committee, argued for years that what was done was basically to manufacture a deficit. I suspect this is more about doing that than it is about providing tax relief; more about manufacturing a deficit, regardless of the consequences of that. Then, when people pay higher interest rates on their home mortgage rates, student loan rates, car payment rates, and everything else you can think of where an interest rate is involved, then that is considered irrelevant. If we can build up enough of a deficit, then we will not be able to invest in education, in health care. Forget about arguing whether or not we ought to do it, we will not be able to afford to do it.

I suspect that may be the motivation here and not providing a tax break for 980 of my constituents under the best of circumstances. I am told there are actually 73 estates, when you get through with all the exemptions, 73 estates that would actually be affected by this proposal.

I join with those who urge our colleagues today that, if we are reorganizing our Government differently to respond to what has happened here in the last year, if we have seen our surplus evaporate because of events that have occurred, investments we have had to make, if we must think differently about everything else we are doing, should we not pause and think differently about this? We should take steps to protect the family farms and small businesses from an estate tax that overreached, but just a few moments ago an amendment that would have done that was defeated. But what we are talking about now are just a handful of estates that would be asked to make contributions to our estate tax revenues. I urge Members to pause and think carefully here before committing our country to this kind of financial obligation, which we will spend years trying to recover from, in my view.

In the 1990s, of course, when we came up with a balanced budget proposal, there were those who predicted dire consequences. We saw a nation eliminate the national debt, eliminate the deficits. A lot of people can claim responsibility for participating in that result: certainly the private sector, the technology sector particularly; certainly Alan Greenspan, the Federal Reserve Chairman who managed the Federal Reserve Bank with such brilliance; certainly President Clinton for being the Chief Executive Officer of the country and promoting a balanced budget approach that carried the thinnest of margins in both this Chamber and the other.

Nonetheless, we found ourselves with a financial footing that people only dreamed about a decade earlier. What a great gift was given to this new administration. In fact, the President himself talked about it when he gave his State of the Union Message. In his first State of the Union Message, he spoke about why we are going to be doing the things we can do, it was because we had accumulated a sufficient surplus in this country. What a wonderful legacy it was going to be to invest in the things we needed to do.

Now, because the recession lasted longer, because of 9–11, obviously, because of an unwise tax cut last year that went into place, we now find ourselves in a situation where we are going to have deficits every year of this administration's duration, and we are going to compound that by taking $840 billion off the table over the next 20 years at a time when we could be investing that money to make this a stronger and better country—just to take care of a small handful of people.

What I would like to know is why are we not here talking about a tax cut that would say to working families, if you are sending your kid to college you ought to get some breaks on doing that, to make it easier for you to invest in your son's or daughter's educational future? Why aren't we talking about some relief there? Why aren't we talking about some relief from the FICA taxes for people? Here we are down here spending 6 hours debating whether or not 3,500 estates nationally, are going to get total repeal of an estate tax.

I think it is unwise. I don't think it is warranted at all.

I will end where I started. I am dumbfounded that this Chamber would even consider this proposal in light of the challenges, the risk, and the dangers we face as a nation—that we would make this kind of a judgment at a time when we are going to need all the resources we can provide for the well-being of our own people.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, while the Senator from Connecticut is here, let me respond to the concern, or his expression that he is dumbfounded that we would even be considering this amendment.

We passed this repeal already. I know the Senator from Connecticut didn't vote for it but a majority of us did—Democrats and Republicans. It passed in the House of Representatives, and the President signed it. This is not something extraordinarily odd that we are doing. This has already passed.

The problem, as the Senator knows, is that under the rule in which it was considered, everything we did in the tax reform bill sunsets at the end of 10 years. As a result, the repeal of the estate tax comes in 10 years. The question for those of us who helped pass this legislation—the majority in the House and Senate, and the President—is, Did we really mean to repeal the estate tax?

What I understand the Senator to be saying when he says he is dumbfounded is that at a time when he says we need the money, we would be making permanent that which we intended to make permanent but wouldn't make it permanent before.

I suppose it is a legitimate question, if he is saying we should revisit what we did before. I take it that is what he means. He just voted, as did the Senator from Rhode Island, who spoke earlier, for an amendment that costs more than the Gramm-Kyl amendment. The Dorgan amendment, according to the Joint Tax Committee's calculation, costs $110 billion in the 10 years, which is substantially higher than the Gramm-Kyl legislation.

I am a little confused about the point with respect to fiscal demand. There are fiscal demands. The ones mentioned by the Senator from Rhode Island—drug benefits, missile defense, and so on—are all in the Bush budget. Those are things we are paying for; they are provided for in the budget.

The budget was established on the basis that we had repealed the estate tax. The question was, Would it be made permanent? It is not as if great circumstances have changed. We do have the war on terror, that is true. I don't think any of us is going to deny that if we need to fund the war on terror, we will. We have already passed a supplemental appropriations bill to do exactly that.

It is odd to argue that the 1 percent of Federal revenues that are collected by the estate tax are critical to the functioning of the U.S. Government in light of the trillions of dollars that we spend—that somehow or other we can't get along without this so-called estate tax.

That is the real question. I think Senator GRAMM was right earlier when he said what it really boils down to is a philosophical debate between those who do not want to allow people to keep their own money but believe the Federal Government needs that money, on the one hand, and those of us who believe this is an unfair tax and the Federal Government can get along without the money.

There is another point. I have made it before. Most of us appreciate the fact that when we cut taxes, in the long run it actually improves the fiscal picture for the Government because more taxes are generated by a more vital economy. I cited yesterday the economists who made the case that reducing taxes will allow more job creation, more capital formation, and a better economy. In fact, there would be about $40 billion of growth in the economy if we were able to repeal the tax today.

The other point made was that very few estates pay the tax, that it is only for the rich.

This morning I read—and I will just briefly reiterate—who it is who pays the tax. Estates don't pay the tax, people pay the tax. Who are these people? This isn't the opinion of the Senator from Arizona, this is the IRS. They have the statistics on who actually pays.

In the most recent report entitled ''Statistics Of Income Bulletins, Summer of 1999''—pages 72–76, if you want to look it up—here is what the IRS says. Here is who pays. It is divided between males and females. The largest group of filers of estate tax—27.7 percent—were men, administrators, upper management, and business owners. You could assume that. But the second biggest group—12.3 percent of filers—were schoolteachers, librarians, and guidance counselors. These are these filthy rich people from whom we have to take money—school guidance counselors, schoolteachers, and librarians.

How about the female estate tax filers? The largest number—14.3 percent—were educators.

If I were a member of the teachers union, I would be down here supporting the Gramm-Kyl amendment to make repeal of the death tax permanent because the largest group of women who file estate taxes are educators. These are the people who actually pay the estate tax. The first person who accumulated the wealth is dead. He hasn't paid the estate tax. His heirs paid the estate tax. Who are these people? Among women, the second largest group, of 9.6 percent, are in clerical and administrative support occupations.

When you put it all together, here is what the IRS says: A significant number of estate tax filers were scientists. We really ought to penalize those scientists. They do not do us any good. Salespeople, airline pilots, military officers, and mechanics. The last category I can understand—entertainers. Of course, we get a lot of money from entertainers. And we should. I don't know why they should be penalized any more than anyone else.

Scientists, sales people, airline pilots, military officers, mechanics, teachers, guidance counselors, and librarians are the people who pay the estate tax.

Maybe their dad was fortunate in life to be able to work hard, save money, and accumulate some wealth. But their dad's dream probably was that they would have a better opportunity in life than he did. He probably sacrificed a lot to be able to leave them some money.

These are the people we are penalizing. We are not penalizing, by and large, some fat cat out on a yacht somewhere. According to the IRS, we are penalizing schoolteachers, airline pilots, and guidance counselors. That is whom we are penalizing.

The Senator from Rhode Island made a point on which I really want to focus. He was absolutely half right. Unrealized capital gains, the appreciation in value of an asset which is not taxed as income, because you don't sell the property and, therefore, have to file an income tax return—you bought some stock, and over the years you keep it, and it gains in value, significantly unrealized capital gains. Until you sell it, you don't pay any tax.

Under the current law, a billionaire got rich by investing in some stock. He never sold any of it. It acquired great value. He dies. His wife inherits that. The way it works today is, because there is an exemption for spouses, she pays no estate tax on it. The next day, she sells it. Do you know what her capital gains tax is? Zero. Do you know why? Under current law, there is what we call a step-up in basis. That property acquires an original basis as if it were the day of death rather than 20 years ago when the dead person bought the asset. When it is sold, there is no gain because the value begins with this much higher value—the stepped-up basis. If you sell it the next day, there is essentially a 1-day gain on it. In other words, there is virtually no capital gains tax. That is the current law.

That is what opponents are defending. That is why I say the Senator from Rhode Island was right. This is wrong. But does the proposal of the Senator from North Dakota, which we will vote on next, do anything about that? No. Does the existing law, if we don't make it permanent, do anything about that? No. It is the Gramm-Kyl amendment that fixes that problem.

This is what isn't understood by many of our colleagues. We don't simply repeal the death tax. We substitute for the death tax the capital gains tax. And we eliminate the step-up in basis, except for an amount which would be equivalent to the exemption today, which is about $5.6 million. Nobody would pay a capital gains tax who would also be exempt from the estate tax.

But except for that amount of stepped-up basis, there is no step-up in basis. If the person who died and bought the stock years ago bought it for, let us say, $1,000, that is the original basis. Let us say it is now worth $1 billion. All right. Subtract $1,000 from

$1 billion, and that is the gain. That is on what they pay the capital gains tax. This is the proper way to tax unrealized capital gains. That is why our proposal really does not cost that much more, if you calculate it properly, than the existing law.

When you eliminate the death tax and replace it with a capital gains tax, you have substituted good tax policy for the current bad tax policy.

Death should not be a taxable event. We do not plan on that. We do not like that. It is not something that we cause to happen. It is like having your house burn down and collecting an insurance payment. We don't treat that as ordinary income because we realize you did not want your house to burn down. Even though you got an insurance payment for it, you should not have to pay that tax on that as ordinary income.

It should be the same with what your father leaves you when he dies. You should not pay a death tax on that. What you should do is, when you sell that property, pay a capital gains tax on it, going back to its original value. That is how you tax unrealized capital gains.

Now, just two final points.

The Senator from Connecticut said only a small percentage of people are affected. That is not really true. There is truly a very large percentage of people affected, even though the number of people who actually pay the estate tax is relatively small.

Let's take the average small business. I don't know what the size of the average small business is, but let's say it employs 50 people, just to use a number. Let's say you have an average family of four, plus other indirect beneficiaries, and so on. So instead of saying one person pays the estate tax, it affects all of the members of the family, and it affects all of the people in the business. There are twice as many people adversely affected as to who actually pays the tax. And in addition to the tax collected by the Government, an almost equal amount of money is paid by people to lawyers and accountants and for insurance to try to minimize their estate tax liability. So it is actually twice as much as people believe it is.

I wonder. The bill that we considered before this bill had to do with hate crimes. Proponents of changing the hate crimes law acknowledged it affected a very few number of people. But the effect on them was significant, they said, and it was unfair that they would be treated as they were treated and, therefore, we needed to do something about this. In other words, this is a minority of people who are treated unfairly, and we need to have the Federal Government step in and do something about that.

So, on the one hand, my colleagues on the Democratic side of the aisle are very concerned about a very small number of people, but when we bring to the floor the question of the death tax and its unfairness: Oh, we don't need to worry about that; that only affects a few people. Well, when something is unfair, and seriously wrong, it doesn't matter how many people it affects; we need to do something about it.

The interesting thing to me is that 60 percent—this is a Gallup poll, and there are some polls that go up to 80 percent—at least 60 percent of the American people agree the death tax should be repealed—not reduced, not have the exclusions made larger, but should be repealed. And the interesting thing to me about that number is two-thirds of those people believe it should be repealed even though it will never have any affect on them.

In other words, they recognize it is not a large percentage of people who are adversely affected by the death tax directly, but they recognize it is unfair.

To me, that says more about the American people than just about anything I can think of, when they say: Even though you have more wealth than I do, it is not fair for the Government to take half of it from your kids when you die. Therefore, even though it doesn't help me any, I am going to stand up for your right to be treated fairly. And I support the permanent repeal of the death tax.

To me, that is a very good indication of the fact that the American people have a sense of fairness. And even though they are not directly benefitted by something, they are willing to support the elimination of that unfairness.

Final point. The suggestion we have already taken care of the small businesses and family farmers and, therefore, we don't need to permanently repeal the death tax. We have been through that in debate earlier today. We have not taken care of the small businesses and family farmers. Unfortunately, as I said, something like two one-hundredths of 1 percent of taxpayers have ever qualified for the exclusion that would take care of them under this provision. And even then, the IRS is going to come after you. And the IRS wins two-thirds of the cases that are brought. It is not a fact that small businesses and farms have been taken care of and excluded from the impact of the estate tax.

So who pays? Average Americans because the wealthier person, remember, died. And the question is, Is it fair to make them pay?

Do we need the money? The things that have been discussed are in the budget. We can always find more things to spend money on. The question is, Should you leave money in the hands of Americans who can build our economy, create jobs and wealth, or should we make the decisions for them by spending the money here in the Government?

I think it boils down to that, and when we have this vote, we are going to be asking one simple question: For those who voted for the bill last year to repeal the estate tax, did they mean it or not? If they meant what they said, they will vote for the Gramm-Kyl amendment, which is the real repeal. It makes the repeal of 1 year into a permanent repeal. That is what the American taxpayers and American people thought we did. It is what we intended to do. And today it is what we can do.

I urge my colleagues to support the Gramm-Kyl amendment.

I now yield 5 minutes to my colleague from the State of Arkansas.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I compliment my colleague from Arizona for his outstanding leadership on this issue. And he has been the leader on this.

I was struck by one statement the Senator from Arizona made in which he said the American people, according to all the polls—and we all know this—overwhelmingly support the elimination of the death tax, even though most of them realize they will never be impacted by it. It does say a lot about the American people. It also says an awful lot about the unfairness of this tax; that is, the underlying tax.

That is the basic issue at stake in the debate we are having. Is this the way we want to tax or not? It is not about whether or not we are going to lose money for the Federal Treasury or not. We may or may not. It is not about whether we can reduce the number of people impacted by this unfair tax by expanding exclusions and lowering rates.

It is fundamentally about, Is this the right kind of tax to impose on the American people? The American people realize and recognize it is unfair for a person, a small businessperson, a farmer, for any American to work decade after decade, saving and investing, making decisions that reward their family, building something for the future, building something for future generations—someone, a businessman, a farmer, an individual paying property taxes, paying sales taxes, paying income taxes, year after year, and decade after decade—and then, at the point of death, at the event of death, you see the Federal Government reach into the grave and take half of everything that person worked for. I think the American people, rightly, have concluded that is unfair.

As the Senator from Arizona also pointed out, the decision about the unfairness and about the need to eliminate this tax was already made. It was made by this body. It was made by the House. It was made by the President over a year ago—a year ago June 7. The decision was: It is unfair. Let's repeal it. Let's eliminate it.

Because of arcane Senate rules, it could not be permanently eliminated. We could not do that last year. But we can do that now. The decision then that it was the right thing to do to eliminate it—that was made last year—we need now to say we really meant that.

It has already been very rightly pointed out that this is not a tax that

affects only a few. It is not just a few fat cats we are talking about. We are talking about literally millions of Americans.

According to the Treasury Department, more than 120,000 individuals filed death tax returns in the year 2000 alone. But that does not tell near the story because not only are there employees and family members who are impacted, but it is also the case that about twice as many people sell their businesses or sell their property early, before they die, so the death tax is not going to be a burden on their family. So instead of 120,000 individuals, you literally have doubled that, and suddenly you are talking about half a million people, plus their families and their employees who are impacted. This is not a tax that just touches a few people.

In addition, even more Americans are forced to pay this tax, not to the Federal Government, but to lawyers, to accountants, and to life insurance agents. Privately held businesses get involved in estate planning because if they don't, all they have worked for will be eliminated. To ignore the death tax statute is suicide for a family business.

Frankly, while the death tax is a terribly ineffective way to redistribute wealth, it is a very effective way to create and maintain an industry geared at avoidance.

This tax generates very little real income for the Federal Treasury. My colleague has already pointed out that the Gramm-Kyl amendment, because of the way it handles untaxed capital gains and the way it changes the step-up provisions in current law, any impact upon Federal revenues will be far more minimal than that which has been estimated.

In addition, the death tax is a very inefficient way of gaining Federal revenue, for 65 cents of every dollar gained is paid out in collection enforcement costs. Other studies have found not only are thousands of dollars going to attorneys and accountants and financial agents, but the average minority-owned business will spend nearly $28,000 a year on life insurance premiums to prepare for the death tax, and $9,000 on death tax planning.

Frankly, the 1.5 percent of Federal income that currently is generated by the death tax is so small that it would, to a great extent, offset the cost of administering and collecting and enforcing the tax.

Beyond all of that, I return to the point with which I began. There are the practicalities that it generates little income, and a whole avoidance industry has developed because of the estate tax.

The PRESIDING OFFICER. The Senator has used his 5 minutes.

Mr. KYL. I yield the Senator 1 additional minute.

The PRESIDING OFFICER. The Senator is recognized.

Mr. HUTCHINSON. Beyond the practicalities, the underlying issue is, is it fair? Is it right? A bigger exemption does not solve the basic unfairness. A greater exclusion, lowering rates, none of that really deals with the underlying issue. It is an unfair tax. It taxes success. It taxes accomplishment. It taxes that which is the American dream. For that reason, we need to get rid of it.

We don't need a mirage for the American people. We need it to be real. We can make it real by supporting the Gramm-Kyl amendment.

I thank my colleague for the time and the opportunity to speak in favor of his amendment.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Mr. President, I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator is recognized.

Mrs. CLINTON. Mr. President, I have a great deal of respect for my colleagues who are arguing this point with extraordinary vigor and zeal. I have no doubt they absolutely believe that the wealth tax is wrong and should be abolished.

We ought to take a step back and put this debate into a bit of a reality check again, since there has been a lot said on the floor which may be good argument points, good advocacy positions, but is not necessarily connected to the reality that we face today as we are about to vote on this decision.

I don't usually come to the floor and quote the Wall Street Journal, but I will today because if one were to look for a source that probably views this issue more favorably to the position of my colleagues, they probably couldn't find a publication that would be more inclined to support it. Certainly the editorial pages have done so, and there are columnists and others who make the argument.

I will enter into the RECORD a column that was written by one of the Wall Street Journal's leading writers, a gentleman by the name of Alan Murray, no friend of taxation, who wrote an article, dated May 28, 2002, entitled ''Senate Needs Reality Check Before Refunding Estate Tax.''

If one reads this, they will get a better context than the sort of disembodied one that occurs on the floor of the Senate where abstractions and generalities can be made for the sake of argument without really looking at what it is we are being asked to vote on.

Mr. Murray starts by saying:

> Marie Antoinette had nothing over the U.S. Senate. In its rush to permanently eliminate the estate tax, the nation's ''deliberative body'' has apparently forgotten to deliberate on the surging social trends of our time.

Mr. Murray goes on to make the following point:

> The last two decades have led to a concentration of wealth and income among the fortunate few in this country that hasn't been seen since the gilded age.

When was the estate tax first proposed and who proposed it? President Theodore Roosevelt, himself a product of the gilded age, who understood intuitively that our country, founded on principles of equality, could not afford to see vast disparities in wealth occur. Therefore, President Roosevelt, a Republican, proposed the estate tax, because he recognized the threat that greater and greater accumulation of wealth that separated the few from the many posed to our Nation.

Mr. Murray goes on to say that ''the 10 most highly compensated corporate chief executives earned a total of $3.5 million in 1981,'' 21 years ago. You take the 10 top CEOs in America. Were they doing a good job in 1981? They were doing a good job. But now 21 years later, the 10 most highly compensated CEOs in our country make $155 million, almost 45 times the 1981 figure. Are they doing a job 45 times better than they did 20 years ago? The argument would be hard to make.

Secondly, we are currently in a situation where our market, the engine of economic growth, has been shaken by revelations about the behavior and conduct among these same highly paid corporate executives. We know, just to take one example, Mr. Skilling, the former CEO of Enron, would benefit to the tune of $55 million if the estate tax were repealed. How would that be paid for because the money is not fungible? If you do away with the estate tax, then you will have to eliminate or cut something. There are a lot of things that probably could be looked at to be cut. How about the Social Security tax payments of Americans? It would take 30,000 Americans earning $30,000 a year, paying their taxes, to make up for the $55 million that Mr. Skilling would benefit. I don't think that passes the fairness test. I don't think that is really the kind of choice we should be making in this body.

Third, as Mr. Murray points out, every single day we are told our Nation is at war. I believe that. I represent New York. We were attacked when America was attacked. I have spent more time than I ever wish to recall working and being with the victims of that horrific attack.

In the past, whenever our country has been at war, we have been called upon to sacrifice. Particularly, the affluent have been called upon to sacrifice because, as Theodore Roosevelt pointed out, you are so fortunate to live in America; there is not a place better devised in the entire history of the world to be successful, to become rich. And the rich, God bless all of us, they actually take more advantage of our system than anybody else. They are really lucky, fortunate, blessed to be in this country.

The inheritance tax was created to finance the wars of the 19th century. The notion of repealing it, when we are under constant threat, when we have to spend billions of dollars to protect ourselves in ways we never had to think about before, strikes me as bizarre. We have voted on the floor of the Senate

for billions of dollars to protect our borders, our ports, our airports, our food, to be prepared against bioterrorism. I went to the White House this morning for the President's signing of the bioterrorism bill. It costs money to get the vaccines and do everything we need to do to protect ourselves and our children.

The idea that, instead of calling upon the most fortunate among us, we would at this point in our Nation's history, rather than reform, repeal the estate tax flies in the face of what we have historically done. Why aren't we on the floor of the Senate asking that we close the loophole for the corporations that take advantage of the good times of being in our Nation and move their headquarters offshore so they don't have to pay any taxes? Unlike everybody else who works for a living, they want to avoid taxation. Yet they are more than happy to take advantage of our country's protection, security, and markets.

What is wrong with this picture? Well, I agreed with Mr. Murray that we have to look at this and inject some reality into it. I have not even gotten to the budget deficit. Last year we had a budget surplus, and I listened to the debate and, honest to goodness, you can take transcripts from 1981 and put them right next to transcripts from 2002; it is the same rhetoric: slash the taxes and you will see more revenues coming in. That is what we were told in 1981. And in 12 years we quadrupled the debt of our Nation. Last year we were told again to slash taxes and we will have even greater surpluses. Now we are back into deficits, we are spending the Social Security surplus, and we are spending the Medicare trust fund surplus.

It is pretty hard to explain how we are in debt and in deficit and we want to make it even worse, which of course shifts the burden not on the rich but on everybody else. If we were going to be talking about repealing taxes, there are taxes that affect far more Americans and really have an impact on the kind of lives that Americans lead. We could make the expanded childcare tax credit permanent. We could make the new 10-percent tax bracket permanent. We could pass the college tuition tax deductibility, which would be a huge benefit for most Americans—particularly middle-income Americans.

Instead, we are debating the wealth tax. It is hard to understand why we are having this debate, except, with all due respect, my colleagues believe it is absolutely the most important issue we can be discussing at this time.

Now, to be sure, the uncertainty posed by the tax cuts that were passed last year is a problem. But the reason they were passed in the form that they were passed is because the numbers would not work any other way and we were hoping to defy the laws of arithmetic.

Many of us believe that raising the taxable limit is a good idea. We believe that reform is significantly possible without repeal. Responsible, affordable reform could save money, as well as continue both the principle and reality of providing a check on the kind of estates that Theodore Roosevelt and his relative Franklin Roosevelt warned us about.

If one looks at all of the issues that we are confronting right now, I just hope we are going to take a deep breath and stop and say: Circumstances have changed since last spring. We don't have a surplus anymore. We are back into deficits. We are bleeding red ink. We have been attacked on our own shores. We have to fund our defense. We have to make sure our men and women in uniform, who are fighting for us in Afghanistan and elsewhere, are given every single piece of equipment and new technology that they deserve. We have to make sure our frontline soldiers, our police officers, our firefighters, the first responders, get the resources they need.

And then we have longer term issues. We have all kinds of infrastructure problems we have to deal with that an individual cannot pay for on his or her own. We have to make sure our bridges and tunnels are safe.

In a few weeks, we are going to debate what to do with nuclear waste. There is going to be a big issue about the safety of transporting it on our barges, along our waterways, on our railcars, and on our trucks. I am getting letters from rural parts of my State saying their bridges are not in good shape. So how can we do that?

In our cities, our sewer systems and our wastewater treatment systems are not up to the kind of standards they should for ordinary treatment of waste and the provision of clean water, and now we have to worry about terrorism. So there is a list of pressing needs that will make us safer and stronger in the future. Repealing the estate tax is not on that list.

Let me also say a few words about who it actually affects. I know my colleague from Connecticut was on the floor because he looked at the same statistics that are available to all of us. As he pointed out, he has 73 filers who were affected by the estate tax. We hear a lot about what happens to family farms, and I looked for any evidence I could find, and I know the Farm Bureau was asked to provide such evidence of any farm, anywhere, that had been lost because of estate taxes.

Neil Harl, an Iowa State University economist, conducted that search and is quoted in an article in the New York Times last year. He said it is a myth. Since most farms in New York are worth less than a million dollars, even under the current law they are not going to have to pay estate taxes; and when we reform it and raise the limits, they certainly are not going to do so.

I talked to one farmer and he said: I dream for the chance to have a farm worth enough that anybody would think I had to pay the estate tax.

There is a lot of mythology and ideology that is being discussed in terms of the repeal of the estate tax, but I guess it really does come down to what are our priorities. If our priority is eliminating billions of dollars of tax obligations from the very richest people, then this is the vote for us. But if it is to protect our Nation's fiscal condition and get back on a path of fiscal responsibility, get back to where we are paying down our debt, not increasing the debt limit as was voted for yesterday, getting out of deficits, putting the money back into the Social Security trust fund, making sure we are prepared for the retirement of the baby boomers, dealing with health care, prescription drug benefits, the needs that both underinsured and uninsured people face to ensure they have health care when they need it, paying for that prescription drug benefit we promised our seniors, making sure we continue to fund our education policy so that we have the qualified teachers in every classroom, we have the equipment and the resources that every schoolchild deserves to have, then this vote is not for us.

There are a lot of priorities at which we have to be looking. Repealing the estate tax would cost about $100 billion this decade, but in the next decade when people like me are starting to retire, then we are looking at a cost of $740 billion. It is hard to imagine from where the money to provide for Social Security and Medicare will come.

The Jeff Skillings of the world and the other corporate executives who have a lot of money to start with—much more than any limit on the estate tax that we could imagine—why, they would be laughing all the way to the bank.

I know a lot of Americans think they fall under the estate tax, and I give credit to the repealers who have turned Teddy Roosevelt on his head, have ignored the manifesto signed by several hundred of our wealthiest Americans, people such as William Gates, David Rockefeller, George Soros. They all said: Don't repeal it; reform it, but don't repeal it; it is bad for our country. I heard Warren Buffett, one of America's richest businessmen, say: It is bad for my family. I had to go out and earn my money the old-fashioned way. I do not want the kind of idle rich that has never been part of the American scene. That is something we did not want to have, and we turned away from it.

The truth is, we do not have a death tax in America. There is no such thing as a death tax. People do not pay taxes at death. We have an estate tax, which is really a wealth tax that is based on people having a certain level of assets.

Currently, it is $1 million. Many of us want to increase it significantly. At the present time, it affects less than 2 percent of the estates in our country. If we raised it to $3 million for an individual and $6 million for a couple and then in 2009 took it to $3.5 million for

an individual and $7 million for a couple, we would have three-tenths of 1 percent of estates subjected to any tax.

I also support setting a maximum rate of 50 percent. Then we really would be aiming at the Gateses and the Soroses and the Rockefellers and the people who have inherited a lot of wealth with an estate tax, and they still would have tens of millions of dollars.

Mr. President, I thank my colleagues for the opportunity to speak. I ask unanimous consent that the Wall Street Journal and New York Times articles to which I referred be printed in the RECORD.

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

[From the Wall Street Journal, May 28, 2002]

SENATE NEEDS REALITY CHECK BEFORE REFUNDING ESTATE TAX

(By Alan Murray)

Marie Antoinette had nothing over the U.S. Senate. In its rush to permanently eliminate the estate tax, the nation's ''deliberative body'' has apparently forgotten to deliberate on the surging social trends of our time.

So let me provide a refresher course:

(1) The past two decades have led to a concentration of wealth and income among the fortunate few in this country that hasn't been seen since the gilded age. Kevin Phillips, whose new book ''Wealth and Democracy'' puts all this in a historical context that should chill the spines of senators preparing to vote ''yes,'' notes that the top 10 most highly compensated corporate chief executives earned a total of $3.5 million in 1981. That rose to $155 million in 2001—almost 45 times the 1981 figure.

(2) The nation is now experiencing a crisis of confidence in these same highly paid corporate executives. Americans tolerated sky-high CEO pay because they thought it reflected the market value of talented managers—just as Michael Jordan's pay reflected his draw at the box office. But recently, the public has gotten graphic evidence that, in some cases at least, CEO compensation had more to do with greed, deception and even downright fraud. The proliferation of stock options, which accounts for most of the huge increase, was supposed to align the interests of corporate managers with those of the shareholders. It did, it seems, but in the wrong direction. Instead of working to make shareholders rich, some executives were manipulating their shareholders in order to make themselves rich.

(3) The nation is at war. And in this country, wars always have been times of sacrifice, particularly among the affluent. The inheritance tax was created to finance the wars of the 19th century. The notion of singling it out for elimination in the midst of the current effort goes against more than 150 years of American history.

Notice that I haven't mentioned the budget deficit. That's because on this score, at least, the Senate deserves some credit. They are talking about singling out the estate tax, at a cost of $99 billion from 2002 to 2012, in order to avoid the whopping $373 billion price tag of the House bill that would make all the provision in the president's tax cut permanent.

But in making this choice, the Senate should justify it. Why deepen the deficit to pay for permanent repeal of the estate tax, if you aren't willing to pay for permanent repeal of marriage tax relief ($16 billion), a permanent extension of the new 10% tax bracket ($79 billion), an expanded child tax credit ($35 billion), or various forms of assistance to people trying to pay the high cost of higher education ($5 billion)? All those tax cuts go to ordinary Americans struggling to raise families and educate their kids.

The Senate's answer? Let them eat cake.

This is not a partisan matter. If estate-tax repeal didn't have substantial support among Democratic Senators, it wouldn't have a chance, given the need for 60 votes to overcome a filibuster. There are already eight or nine Democrats, including Senate Finance Committee Chairman Max Baucus, who have indicated their support. Estate-tax lobbying groups are working fervently over the holiday to win a few more.

Also, this isn't an ideological matter. The House Republicans are the ideologues; they'll vote for any tax cut that comes down the pike. Senators, in their pragmatism, bear the burden of explaining why they have chosen this tax cut above all others.

To be sure, the estate tax cut enacted by Congress last year is, in its current form, an atrocity. It would repeal the tax for one year at the end of the decade, and then, to satisfy Senate budget rules, reinstate it in 2011. This would lead to some ghoulish estate planning, creating an incentive for heirs to keep dad alive until 2010, and then pull the plug by New Year's Eve.

But that is hardly a good argument for permanent repeal. Nor is the oft-heard refrain that this helps farmers and small-business people who want to keep their enterprises in the family. Those folks account for less than 10% of total estate-tax revenue, and could be accommodated with measures falling far short of total repeal.

The only good news here is that Senate Majority Leader Tom Daschle still has a good chance of holding enough of the Democrats to keep the measure from getting 60 votes. If he succeeds, he'll be accused, again, of obstructionism. But this time, he'll be saving Senators of both parties from excessive catering to big campaign contributors, and from putting themselves squarely on the wrong side of history.

[From the New York Times]

FOCUS ON FARMS MASKS ESTATES TAX CONFUSION

(By David Cay Johnston)

WELLSBURG, IOWA.—Harlyn Riekena worried that his success would cost him when he died. Thirty-seven years ago he quit teaching to farm and over the years bought more and more of the rich black soil here in central Iowa. Now he and his wife, Karen, own 950 gently rolling acres planted in soybeans and corn.

The farmland alone is worth more than $2.5 million, and so Mr. Riekena, 61, fretted that estate taxes would take a big chunk of his three grown daughters' inheritance.

That might seem a reasonable assumption, what with all the talk in Washington about the need to repeal the estate tax to save the family farm. ''To keep farms in the family, we are going to get rid of the death tax,'' President Bush vowed a month ago; he and many others have made the point repeatedly.

But in fact the Riekenas will owe nothing in estate taxes. Almost no working farmers do, according to data from an Internal Revenue Service analysis of 1999 returns that has not yet been published.

Neil Harl, an Iowa State University economist whose tax advice has made him a household name among Midwest farmers, said he had searched far and wide but had never found a farm lost because of estate taxes. ''It's a myth,'' he said.

Even one of the leading advocates for repeal of estate taxes, the American Farm Bureau Federation, said it could not cite a single example of a farm lost because of estate taxes.

The estate tax does, of course, have a bite. But the reality of that bite is different from the mythology, in which family farmers have become icons for the campaign to abolish the tax. In fact, the overwhelming majority of beneficiaries are the heirs of people who made their fortunes through their businesses and investments in securities and real estate.

The effort to end the estate tax—which critics call the death tax—gained ground when the House of Representatives voted Wednesday to reduce the tax and then abolish it in 2011. The bill faces an uncertain fate in the Senate.

The estate tax is central in the debate over taxes, not only because the sums involved are huge but also because to both sides it is a touchstone of national values. To those seeking to abolish it, the estate tax is a penalty for success, an abomination that blocks the deeply human desire to leave a life's work as a legacy for the children. It is also a complicated burden that enriches the lawyers, accountants and life insurance companies that help people reduce their tax bills.

To its supporters, on the other hand, the estate tax is a symbol of American equality, a mechanism to democratize society and to encourage economic success based on merit rather than birthright.

Yet for all the passion in the debate, the estate tax does not always seem broadly understood.

While 17 percent of Americans in a recent Gallup survey think they will owe estate taxes, in fact only the richest 2 percent of Americans do. That amounted to 49,870 Americans in 1999. And nearly half the estate tax is paid by the 3,000 or so people who each year leave taxable estates of more than $5 million.

In fact, the primary beneficiaries of the move to abolish the estate tax look less like the Riekenas and more like Frank A. Blethen, a Seattle newspaper publisher whose family owns eight newspapers worth perhaps a billion dollars.

''Being ever bloodthirsty, the I.R.S. will start with the highest value it can on my estate,'' said Mr. Blethen, the 55-year-old patriarch of the publishing family. The figures for his share will probably be several hundred million dollars, more than half of which would go to the government. Mr. Blethen is trying to avoid almost all those taxes through a plan also used by other wealthy families, but if he does not succeed his sons' interest in the business will be wiped out, he said.

Estate taxes are paid by few Americans because they are not assessed on the first $1.35 million of net worth left by a couple. Amounts above this are taxed at rates that begin at 43 percent and rise to 55 percent on amounts greater than $3 million. As the Riekenas and the Blethens have learned, there are many legal ways to reduce the value of one's wealth for estate tax purposes. So even for the largest estates, the tax averages 25 percent.

Family farmers are often cited as victims. As Senator Charles E. Grassley, an Iowa hog farmer and chairman of the Senate Finance Committee, put it, ''The product of a life's work leaches away like seeds in poor soil.''

Yet tax return data show that very few farmers pay estate taxes. Only 6,216 taxable estates in 1999 included any agricultural land and equipment, the I.R.S. report shows. The average value of these farm assets was $440,000, only about a third of the amount that any married couple could leave untaxed to heirs. What is more, a farm couple can pass $4.1 million untaxed, so long as the heirs continue farming for 10 years.

In Iowa, the average farm has a net worth of $1.2 million. Loyd A. Brown, president of Hertz Farm Management in Iowa, which runs more than 400 farms in 10 states, said that while he didn't know of anyone who had lost a farm because of the estate tax, he thought Congress should either eliminate the tax or increase the amount that could be inherited untaxed.

Just 1,222 estates in 1999 had enough in farm assets to make the farm property alone subject to estate taxes. But these farm assets amounted to one-tenth of these estates, suggesting that the tax applies mostly to gentleman farmers and ranchers, rather than to working farmers like the Riekenas, whose fortunes are tied up in their farms.

As the Riekenas were surprised to discover, avoiding the estate tax was easy. Their lawyer developed a simple plan that involved making gifts to their daughters and buying life insurance to offset any estate taxes that might be due if the parents died before most of the farm had been turned over to their daughters.

There is a real cost, of course—payments to the lawyer and for the insurance. And in any case the paucity of affected farmers does not end the debate. Patricia A. Wolff, the Farm Bureau's chief lobbyist, said the organization made estate tax repeal its top priority because, while it has not surveyed its members, she was confident ''the majority of farmers and ranchers believe that death taxes are wrong and that it is wrong to tax people twice on what they earn.''

But Mr. Riekena and all two dozen other farmers interviewed across central Iowa—every one a Republican—said that while they favored increasing the amount that could be passed to heirs untaxed, they did not support the repeal proposed by President Bush and other leaders of his party. A few snickered or laughed when asked whether the estate tax should be repealed to save the family farm.

But Senator Grassley himself opposes the estate tax, in large part because he thinks that while a decision to keep or sell an asset is an appropriate trigger for a tax, death should not be.

He added another reason: ''I do not think that the function of government is to redistribute wealth.''

Indeed, that seems to be the fault line in the debate: should the government play Robin Hood with estates?

''If you worked hard and put your money away, you paid tax on it as you went along, so it's yours and you should be able to pass it on to your children without the government penalizing you,'' said R. Elaine Gunland, who grows grapes in Fresno, Calif., and whose family may owe estate taxes when she dies.

Mr. Blethen, the fourth-generation publisher of a newspaper started in 1896 with $3,000, says he speaks for many others in supporting repeal of the tax in the name of preserving family businesses.

''I firmly believe that family-owned businesses are the heart and soul of the country,'' said Mr. Blethen, who has created a Web site called deathtax.com.

Mr. Blethen says the estate tax benefits publicly traded companies at the expense of family-owned businesses. The reason is that the public companies can often buy family businesses at a discount because the owners did not raise the cash to pay estate taxes and must sell quickly at fire sale prices.

Mr. Blethen said some of the seven smaller papers his family bought in Washington and Maine came from families that had not planned carefully for the estate tax and decided it was easier to cash out.

''If you like corporate culture, and think America needs more of it, then you love the estate tax,'' Mr. Blethen said. ''I think this march toward corporatism is not healthy and we lost innovation, jobs and charitable giving.''

Mr. Blethen said the estate tax also discouraged major new investments in family businesses late in the life of the primary owner because such investments consumed cash that might be needed at any time to pay estate taxes.

He said the estate tax also ''forces you into irresponsible gift making'' to heirs. He felt compelled to give half the future growth of his fortune to his two sons when they were not yet kindergartners even though he had no way of telling whether the boys would turn out to be industrious, as they did, or scalawags.

Despite his fierce opposition to the estate tax, Mr. Blethen does not support President Bush's current plan to repeal the tax because it would also exempt from capital gains taxes the profits on assets passed to heirs when those assets are sold. ''That's not fair,'' Mr. Blethen said.

He said Mr. Bush's proposal would have the perverse effect of encouraging the sale of family-owned businesses, because heirs would see death as their chance to sell tax-free and to diversify their portfolios, instead of continuing to bear the risks of holding a single enterprise.

Mr. Blethen thinks that rather than taxing an estate, taxes should apply when a business is sold. ''YOu want to defer those capital gains and let them grow so large that the family will keep the business to avoid the capital gains taxes,'' he said.

The debate does not divide neatly among rich and poor. Since February more than 800 wealthy Americans have joined in a public appeal to keep the estate tax. They argue that repealing the tax would further enrich the wealthiest Americans and hurt struggling families. They also argue that financial success should be based on merit rather than on inheritance.

Warren E. Buffett, George Soros, Paul Newman and William H. Gates Sr., father of Microsoft's chairman, William H. Gates III, are among the most prominent in that group, which also includes many people with holdings of just a million dollars.

Mr. Buffett said the estate tax fosters economic growth by encouraging Americans to rise based on merit, not inheritance. ''If you take the C.E.O.'s of the Fortune 500,'' he said in an interview, ''and put in the eldest son of every one of those who ran the place in 1975, the American economy would not run as well as letting the Jack Welches, who started out with nothing, rise to the top of General Electric.''

Back in central Iowa, Mr. Riekena had another reason. He said Washington was focused on the wrong issue when it came to saving family farms.

''For most farmers around here, the estate tax is not high in their minds,'' Mr. Riekena said. ''What we need are better crop prices.''

Mrs. CLINTON. Mr. President, rather than one day raising the debt limit without any plan to get us out of debt, except continuing to believe in the god of supply-side economics, which did not work so well 20 years ago, and instead of repealing the wealth tax without any plan for dealing with our problems, like a war and Social Security and other significant issues we confront, I hope we will opt for the more responsible way of reforming the estate tax and make it clear that the reality check in this body demonstrates clearly we cannot afford it. It would be the wrong decision, and we have other priorities that we need to get about the business of addressing. I thank the Chair. I yield the floor.

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

Mr. KYL. Mr. President, before yielding, I ask unanimous consent to have printed in the RECORD two editorials from the Wall Street Journal, dated June 10, 2002, and February 22, 2001, both of which demonstrate support for the permanent repeal of the death tax.

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

[From the Wall Street Journal, June 10, 2002]

THE DEATH TAX SENATORS

We are about to find out how many of the 12 Senate Democrats who voted for tax cuts last year really meant it. They'll get the chance to provide their sincerity when the Senate takes up a vote to make repeal of the death tax permanent, perhaps this month. Last Thursday, 41 of their Democratic counterparts in the House joined the 256–171 vote to make this punitive tax disappear forever.

Majority Leader Tom Daschle first tried to forestall a Senate vote, because he knows a clear majority favors passage there too. But he was forced to give in recently in return for some concessions on the energy bill. So now he's trying to hold off Senate passage with a filibuster that requires 60 votes before it can get to President Bush's desk. Supporters of permanent repeal figure they have at least 58 votes, and Mr. Daschle has been twisting arms to block what is the will of many even within his own party.

Almost every Republican voted for repeal the first time around, though Vim Jeffords has since sold his vote for dairy subsidies. Liberal Rhode Island Republican Lincoln Chafee, is also in doubt, as is John McCain, who voted against President Bush's original tax cut and moves further let by the month; maybe the Arizonan should consider truth-in-advertising and jump to Team Daschle.

The complete gang of 12 Democrats who voted for the tax cut last year is listed in the table nearby. Six are up for re-election this November, and to their credit three of those running have already said they'll vote for repeal. It's probably no coincidence that all three are running in conservative states carried by Mr. Bush in 2000 and all of them face more than token competition this year.

Two others running in November, New Jersey's Bob Torricelli and Louisiana's Mary Landrieu, have already flip-flopped and announced intentions to vote against permanent repeal. Their excuse is that things are different now that the country is facing budget deficits and wartime expenses. But it's far more likely that they've changed because their re-election opposition has since all but collapsed. Mr. Torricelli was especially fond of just about any tax cut in his taxophobic state, until Justice declined to indict him for accepting illegal gifts and he concluded the New Jersey GOP couldn't muster serious opposition.

One vote still in the balance is Missouri's Jean Carnahan. She faces a strong challenge this fall from Republican Jim Talent, who has made the death tax a central issue in his campaign. She's doing a remarkable dodge and weave, claiming to favor repeal for small businesses and farms but she is undecided on the repeal that passed the House. Sounds to us as if she's waiting for orders from Mr. Daschle; if he doesn't need her for his filibuster, he'll give her a pass to vote yes and remove the issue for November.

One virtue of this death-tax debate is that is reveals what's really at stake in this November's Senate races. If Mr. Daschle retains

his Democratic majority, further tax cutting is dead. But if Republicans pick up a mere one seat, for a 50–50 split, they'll be able to organize the Senate with the help of Vice President Cheney's vote and tax-cutting becomes possible again.

Mr. Daschle gave his Bush-state Democrats a tax-cut pass last year, but the perversity of Senate budget rules meant the tax cuts end after 10 years. This is crazy tax policy, since it increases uncertainty and would amount to the largest tax increase in history in 2010 if the law isn't changed.

It is absolutely insane in the case of the estate-tax repeal; the death tax declines slowly over the next seven years, disappears entirely in 2009, but then snaps back to its confiscatory 55% pre-Bush rate on January 1, 2010. So forget about rational estate planning. Far from the tax on the uberrich that Dems claim it is, only 5,200 of the 116,500 tax returns filed in 1999 were for estates worth more than $5 million. In any case, the main argument for repealing the death tax isn't economic, but moral. It's unjust for the government to double tax away, at death, the fruits of a life of work and thrift.

The death-tax repeal vote is also about truth in politics. A year ago these Senators voted to repeal the death tax, but only with a wink and an asterisk that it would all come back after 10 years. No wonder voters are cynical about politicians. The next death tax vote will separate the cynical from the sincere.

THE GANG OF 12

A dozen Democratic Senators voted last year for the temporary repeal of the death tax.

Against

John Breaux (La.)
*Mary Landrieu (La.)
*Robert Torricelli (N.J.)

For

*Max Baucus (Mont.)
*Max Cleland (Ga.)
Dianne Feinstein (Calif.)
*Tim Johnson (S.D.)
Herb Kohl (Wis.)
Blanche Lincoln (Ark.)
Ben Nelson (Neb.)
Zell Miller (Ga.)

Undecided

*Jean Carnahan (Mo.)

*Up for re-election this year

[From the Wall Street Journal, Feb. 22, 2001]

A TAX ON VIRTUE

Maybe you have to be a billionaire to appreciate the argument for keeping the estate tax.

A newspaper ad signed by Bill Gates Sr., George Soros, David Rockefeller and more than 200 other money-bags has just warned that repealing the estate tax ''would have a devastating impact on public charities.'' We live in strange times indeed when the ethical case for keeping a tax rests upon a collection of fat cats talking about the things they will do to avoid paying it.

Of course, they don't really have an economic argument. Anyone who looks at the numbers knows that the death tax amounts to only about 1% of all federal revenues. But that figure doesn't begin to get at the actual and opportunity costs involved in collecting it. When the Joint Committee on Taxation looked into the issue two years back, it found these costs staggering: punishing savings, encouraging consumption and costing almost as much in compliance as it takes in.

What about the moral argument? Everyone knows about sin taxes—taxes on cigarettes, alcohol, etc. Well, a death tax is a tax on virtue. It's tax on those who've worked hard, saved well and in most cases have already paid taxes on their wealth at least once and probably twice.

It is also responsible for a whole tax-avoidance industry, which takes in millions itself from the 200 well-heeled individuals in Sunday's ad. Put simply, if you really are rich enough you can have your cake and pass it along to your heirs too. But if you can't afford to pay the legions of estate lawyers, trust fund accountants and life insurance underwriters, your heirs will be forced to sell off what you've worked so hard to build up to pay off the IRS man waiting outside your funeral for his take.

So if the death tax really isn't all that significant for the government, why the opposition to getting rid of it? the answer is that the death tax was never about money. It is about envy and the corrosive philosophy it feeds. This is the philosophy Senator Tom Daschle invokes when he talks about Americans in terms of those whose tax cuts will let them buy a Lexus and those who supposedly will get no more than a muffler. The death tax is their favorite, the name of the game being to stoke the flames of resentment among the 98% of Americans who don't pay this tax against the 2% who do.

Their problem is that the public isn't buying. No matter how they are worded, polls show Americans instinctively understand there is something rotten about a government that would confiscate half of what you've worked hard to build up. This month a McLaughlin & Associates poll reported 88.5% of Americans saying the death tax is unfair, and nearly as many favoring its abolition. A Zogby/O'Leary report clocked in with 86% declaring the tax is unfair. A Portrait of America survey from last July even had 59% of Gore supporters wanting the tax killed. Given that the vast majority of Americans know that the death tax won't affect them personally, opposition to the tax is a pretty strong statement about ideas of fairness and morality.

Within the Bush Administration there are murmurs about giving up on abolishing the estate tax in the hopes of getting the President's other cuts through, and there have already been some defections in the GOP ranks. This would be a grave miscalculation. In his acceptance speech in Philadelphia in August, George W. Bush said that his own position was based on the ''principle'' that ''every family, every farmer and small businessperson should be free to pass on their life's work to those they love.'' In the next breath Mr. Bush stated that ''on principle'' he also couldn't see why anyone ''in America should have to pay more than a third of their income to the federal government.''

These are good, sturdy principles for President Bush to stand on. In the election one of the defining differences between George Bush and Al Gore was that the former understood you don't make poor people better off by making rich people poorer. You help poor people by giving them a stake in the system that makes rich people wealthy. In the past only the wealthiest Americans have really been in a position to give their children and grandchildren advantages by transferring wealth. But a booming stock market and the growth of 401k plans means that American families of even modest incomes might leave a legacy for their children. Billionaires might not understand this, but ordinary Americans clearly do.

Within this context the death tax should be seen for what it really is: the flag of convenience for the Beltway's class warfare brigade. They know all too well that if they can't sell envy on an inheritance tax, they can't sell it at all. The real danger for the President is a halfway measure that would deprive him of victory and foster a reputation as a tinkerer rather than a reformer. ''The only way to eliminate the unfairness of the death tax,'' says Rep. Jennifer Dunn, sponsor of last year's legislation, ''is to end it once and for all.''

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

Mr. NICKLES. Mr. President, let me make a couple comments before the Senator from New York leaves. We passed legislation recently to help the victims of terrorism, including New York City and Oklahoma City, and we reduced their estate tax. I think we exempted estates basically under $8 million and said if they have an estate over $8 million, it would be 18 to 20 percent which, in my opinion, is what the maximum death tax should be.

I heard my colleague say there is not a taxable event on death. I happen to disagree. If someone dies, it is a taxable event under current code. Some of us are trying to say a taxable event should not be when somebody dies, but when the assets are sold and sold voluntarily, that means the people initiated a transaction and know what the tax will be.

Current law is when someone dies, it is a taxable event. They tax the estate up to 50 percent. My colleagues want to exempt estates of $3 million or $4 million, maybe $7 million if it is a couple and they both die at the same time, but we want half of it after that. The Conrad amendment is not 50 percent, it is 55 percent, if you have a taxable estate between $10 million and $17 million.

Fifty-five percent is over half; 50 percent is half. That is a lot. Why should the Federal Government be entitled to take half of somebody's property if they happen to have an estate of $20 million?

How is it right to say to New York City and Oklahoma City—your tax rates should be 20 percent for victims, but everybody else has to pay 50 percent? If somebody has three or four restaurants or they have a very large ranch or a nice successful real estate business they are building and growing and their kids want to continue it and we fail to pass the Gramm amendment, we are basically saying that a tax $3 million is enough and maybe $7 million if combined. We are asking the Federal Government to come in and take half. This family exclusion proposal, which was not adopted earlier, would not work.

I am embarrassed for my colleagues to say they believe in free enterprise but free enterprise up to an estate of $3 million, and above that the Federal Government gets half; that the Federal Government should confiscate half the property because somebody passes away.

We are saying: No, let's not have a taxable event at death; rather, let's have a taxable event when the property is sold. And when the property is sold, you pay the 20 percent capital gains

tax. This eliminates lots of legal time and expenses trying to avoid this unnecessary tax.

Somebody said: What about the Rockefellers? They do not pay the taxes; they set up foundations. That is what Mr. Gates is doing. That is what the very wealthy people do. They do not pay this tax. The people who pay it are the people who have the farm, the ranch, the small business and somebody dies unexpectedly—I know because it happened to my dad—and Government comes in and says: We want half.

Unfortunately, if we adopt the Conrad amendment, the Government will continue taking half. I think it is unconscionable. We should reduce the rates, not just increase the exemption. This only applies to 1 or 2 percent. We should cut the rates to 20 percent, cut it to a voluntary transaction, cut it to a capital gain. Then we have solved the problem; we have eliminated the problem.

This is a terrible tax and it is unfair. We are making countless thousands of people not grow their business, not expand because they know they are going to be compiling problems for the future. Why build and expand if you are going to be giving half to the Government and maybe causing all kinds of litigation for your children? Why double, why build, why expand, why grow? I know many people who have worked hard to made enough to get along and live a comfortable life. This tax should not ruin these years of hard work.

We should change this tax, and do it by adopting the Gramm-Kyl-Nickles amendment. I encourage my colleagues to vote in favor of this amendment and oppose increasing the exemption and then sock it to them and have the Federal Government take half the estate if it happens to be over this deductible amount.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I rise today to support permanent repeal of the estate tax. Permanent repeal of the estate tax will help boost Montana's economy and will help boost America's economy, create jobs, and protect the heritage of our farmers and ranchers.

As chairman of the Senate Finance Committee, I was proud to help write last year's tax cut, which included a number of good changes to the estate tax, including increasing the unified tax credit and restructuring the rates.

Now it is time to go further. As the law currently stands, the estate tax will be fully repealed in 2010.

It will return to 2001 levels the next year, 2011. Let us use some common sense. Estate tax is a prime example of a tax that dampens efforts to create more jobs in Montana and across the country, and that is what this is all about, creating more jobs.

My State is a small business State, an agricultural State, a State of family-owned farms and ranches, a place where main street businesses are still family owned. It is important to Montanans to be able to pass on their businesses, their farms, their ranches, to their sons and to their daughters.

I support the Gramm-Kyl amendment to eliminate the sunset of the estate tax, to permanently repeal the estate tax, to free up money to help families, family-owned businesses, farms, and ranches. Permanent repeal of the estate tax will allow families to better plan particularly for the continuity of their estates.

Our family-owned businesses, farms, and ranches are the backbone of my State. I do not know another State that is a more small business State than mine. It is also the backbone of America, I might add—small business.

Family-owned businesses are our country's heritage, and it is up to us to protect that heritage. Full, permanent repeal is the right thing to do for our farmers, for our ranchers, for hard-working small business owners. It is the right thing to do for the Nation, and most certainly permanent repeal is the right thing to do for Montana.

I urge the Senate to support permanent repeal of the estate tax for this generation and generations to come.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Mr. President, on the two previous amendments, we have afforded the authors of the amendments the ability to close the debate. We would like to preserve that right for ourselves in this debate on our amendment. So what I would like to do is to ask those on the other side who want to come and speak to do it, so we can take our remaining time to use at the end to close out the debate.

There is no rule that says it has to be done that way, but when we closed out the debate on the Dorgan amendment, he had the last 11 minutes. When we concluded the debate on the amendment of the senior Senator from North Dakota, he closed out that debate. So if we could do it that way, we would like to do it. It seems reasonable to us. If anybody objects, obviously we can talk about an alternative.

Mr. GRASSLEY. Mr. President, as you know, for as long as I have been in Congress, my belief is that no American family should be forced to pay over half of their savings, their business, or their family farm in taxes when they die. No taxpayer should be visited by the undertaker and the tax collector at the same time.

With the President's support we have helped those families we care about, this Senate voted by a wide majority to help those families who are being crushed under the expensive responsibilities of estate tax planning and estate taxes. I have heard the concerns of the people in Iowa and the American people, and this Congress voted to repeal the ''death tax.''

Now, the Democrat leadership wants to take that all away. Once again they want to take more then half of a family's assets because someone has died. The Democrat leaders just want to spend your money. Well, folks, that is not right. Death is not a taxable event.

We have the chance today to make death tax repeal permanent. We have heard from the brave men and women who fought World War II, they fought for democracy and then came home to help fuel the economy that created this wealth. They are dying by the thousands everyday, now they want the death tax to die forever. That means for the first time, American taxpayers, who are good Americans, who saved and invested in savings accounts and stocks and bonds will be treated equally with all other taxpayers. It means, that for the first time, American farm families and the owners of small businesses will not have to jump through hoops, hold their breath, and pray they did it right, subject to audit, in order to know they will not have to pay death tax.

Last year we repealed the death tax, effective for anyone dying after December 31, 2009. If not for budget constraints we would have repealed it sooner, but at least today we can vote to make the repeal permanent. We will be able to start a new decade with no death tax to burden the future generations. By repealing the death tax we will save thousands of family-owned businesses and in turn saving the jobs of hundreds of thousands of employees when family businesses are faced with death tax.

We have heard the American people, we have reformed and repealed the death tax. I urge all of my fellow Senators to repeal the sunset so death tax will be dead once and for all. Beware of all these Democratic amendments that try to once again make the law murky and complex. Keep it simple and fair—repeal the sunset. Make death tax repeal permanent.

Mr. SMITH of New Hampshire. Mr. President, the estate tax, better known as the ''death tax,'' is an onerous tax that should be eliminated. A recent poll revealed that 77 percent of the voters believe that the tax is unfair.

This tax is slowly destroying family businesses by slowing growth. And it is unfair that families who have worked their entire lives to build a successful family farm or business should be penalized.

Individuals who look forward to leaving something behind for their children should not be punished by confiscatory, anti-family taxes.

In fact, after years or even generations, children are often forced to sell the family farm or business just to pay the tax. This is both unfair and unconscionable.

However, not only is it the children who must suffer the loss of the family business, but the workers and their children who suffer when they lose their job because the business they've been working at is liquidated to pay the death tax.

But it doesn't stop there. The local community, particularly small towns, suffer as well because their customers can no longer afford to buy their products after having lost their job.

The estate tax is outdated, it raises little money, and it imposes a large cost on the economy.

In 1999 the estate tax generated about $24 billion. However, it is estimated that administrative costs to enforce the tax are over $36 billion.

A recent analysis by the Heritage Foundation found that the U.S. economy would average nearly $11 billion per year in additional output if this tax were abolished.

The National Association of Manufacturers states that 40 percent of it's members had spent more than $100,000 on attorney and consultant fees related to death tax planning. In addition 3 out of 5 members pay at least $25,000 a year to prepare for the death tax.

A 1998 study by the Joint Economic Committee found that if the death tax was repealed, as many as 240,000 jobs would be created and Americans would have an additional $24.4 billion in disposable personal income.

A February 2000 study by the National Association of Women Entrepreneurs found that the death tax has a negative impact on female entrepreneurs.

According to the study, business owners found that female entrepreneurs spent, on average, nearly $60,000 on death-tax planning.

So who pays the death tax?

We all do. We pay it through lower wages and fewer jobs. In high-unemployment regions or rural areas such as the North Country of New Hampshire and elsewhere, the death tax destroys badly needed jobs before they are created.

We pay it through the destruction of our communities. In hundreds of American towns, small family-owned businesses are struggling to survive against the competition provided by large corporate retailers.

Home Depot doesn't pay the death tax. The family-owned hardware store does. The death tax accelerates the transfer of wealth from the owners of small businesses to the owners of large, public corporations.

And we pay it through slower growth and less wealth. Study after study shows the death tax reduces savings, lowers investment, and restricts the capacity of the economy to grow. The death tax literally confiscates capital, the lifeblood of any economy. That means lower incomes and fewer opportunities for ourselves, as well as our children.

Death tax supporters argue we cannot afford to repeal this tax. All the evidence suggests just the opposite. We cannot afford to continue this destructive tax.

So who's left holding the bag, the middle-class.

This tax is unfair and it is anti-family. We must repeal this tax now. I strongly urge passage of this legislation.

The PRESIDING OFFICER. The Senator from North Dakota.

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

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

Mr. CONRAD. Mr. President, I yield 4 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, first let me rise to disagree with my colleague, the chair of the Senate Finance Committee. In the State of Minnesota, in 1999, there were 636 families who paid the estate tax. If we pass the Conrad amendment, which says for a family we are targeting $7 million, we will have exactly 36 families left in our State who will be paying this tax.

We had the Dorgan amendment that said if someone is going to be a family farmer or have a small business, and they are going to pass it on, and one is going to take over the farm and the small business, they are exempt. That is what it is all about when it comes to fairness.

Instead, what we have is a proposal that I yesterday labeled win/win or lose/lose, dependent upon one's values and priorities. If one believes they should bleed the economy over the next 20 years to the tune of a trillion dollars, and all of those benefits will go to multimillionaires and billionaires, and at the same time have to raid the Social Security trust fund—we just raised the debt ceiling $450 billion, and some of my colleagues who voted against it are voting for eliminating this tax. So if they believe the benefits should go to the top of the top of the top, and in addition they want to bleed this economy to the tune of a trillion dollars over the next 20 years so we will not be able to live up to our Social Security obligations, we will take it out of the Social Security trust fund; we will not have the money for affordable prescription drug coverage; we will not make the investment in the health and skills and intellect and character of children; we will not invest in education; there will be nothing for affordable housing; we will not be able to do anything about deplorable conditions in nursing homes. If they believe this and believe there is nothing the Government can or should do, this is win/win.

I said it yesterday. This is lose/lose for the people of Minnesota. This is lose/lose for probably 99.99 percent of the population. This is lose/lose for people who believe we should have tax fairness, that we should target these breaks to small businesses and family farmers. This is lose/lose for people who believe there is a role Government can play when it comes to the improvement of people's lives and that we have an important challenge before us: Affordable prescription drugs, good education, investment in our schools, our children, making sure Social Security will be there for people. These are the priorities.

This proposal is very clear in what its ultimate goal is, which is above and beyond massive tax unfairness. It will so erode the revenue base and will prevent any initiative in these areas: Prescription drug coverage, education, health care coverage, affordable housing. By definition, it is fiscally irresponsible. So on both counts, it is a massive subsidy, an inverse relationship to need.

All together, 36 families in Minnesota will not be helped if we go forward with the Conrad proposal. If we had gone forward with the Dorgan proposal, every family in Minnesota but 36 families would be helped. This proposal is so skewed toward the top of the top of the top and at the same time undercuts our ability to make any of the investments we need to make to do better as a nation.

I hope my colleagues will vote against the Gramm proposal and will vote for the Conrad amendment.

I yield the floor.

Mrs. MURRAY. Mr. President, the estate tax is bad for businesses. It is bad for workers and new job creation. And it is bad for our communities who are watching their local, family-owned businesses get swallowed up by large corporations. Therefore, I wish I could have supported the estate tax repeal amendment debated today.

For the last 7 years, I have worked to address the problems with the estate tax. I introduced legislation in 1995 to reform the estate tax, and I voted for the 1997 tax bill that made it easier for family farms and small businesses to transfer their assets to the next generation. In 2000, I cosponsored legislation by Senator JON KYL and former Senator Bob Kerrey to repeal the estate tax. I voted for similar legislation later that year. I believe the Kyl-Kerrey bill made a critical contribution to the estate tax debate. It was a middle ground that essentially substituted an estate tax when an asset is transferred at death with a capital gains tax when an asset is sold. In my opinion, that is a fair approach.

For me, estate tax repeal is about protecting and creating jobs, strengthening locally owned businesses, and protecting the environment. When a business owner spends thousands of dollars each year on estate tax planning, that is less money the owner invests in employees and the business. When family businesses are sold, they are often purchased by large corporations, not by other locally owned businesses. When timber lots or farms are sold, there is a good chance that land will be eaten up by strip malls or other development, and not kept as open

space. For the reasons I just outlined, a vote for repeal would have been the easy road to travel today.

My constituents did not elect me to the Senate to take the easy road. They elected me to make tough decisions. As much as I believe the estate tax is a bad tax, I believe passionately that we have a responsibility to balance the government's books. Just as the estate tax hurts businesses and jobs, so does chronic deficit spending by the Federal Government.

During the last 2 days, some of my colleagues have argued for permanent estate tax repeal. Not one of them has told me how we will pay for it. Last year's tax cut blew open the budget while not making estate tax repeal a high priority. Our budget problems were made worse by the recession and September 11 terrorist attacks. Clearly, we are in a different place than we were 2 years ago.

The country deserves a debate on how we balance estate tax repeal—or other aspects of last year's tax law—with our other obligations. We must address our homeland security needs, whether it is strengthening airline and port security, improving operations at our borders, or making sure our troops in the field have the training and resources they need. Our constituents are also demanding action on issues that were important prior to September 11. Health care is a crucial issue for individuals and families, and to the businesses who support estate tax repeal. In addition, we cannot lose sight of long-term investments in education, job training and infrastructure. Given what is at stake, we do a disservice to the American people if we simply tell them they can have it all. We have to make choices, and last year the administration and Congress chose not to make estate tax repeal a priority.

While I could not support the estate tax repeal amendment offered by Senators GRAMM and KYL, neither could I support the amendments by my Democratic colleagues. While well intentioned, I believe the nation has moved beyond whether we should repeal the tax. To me, it is not a question of if, but when we repeal the tax and how we pay for it. The alternative amendments offered today would have taken us backwards.

Today is not the last time we will debate estate tax repeal. Between now and the next estate tax vote, I believe Congress and the administration need to reach agreement on a basic budget framework that makes room for estate tax repeal. Unless we repeal the estate tax in the context of a budget agreement, we will just be playing politics instead of making real progress

Mr. FEINGOLD. Mr. President, I strongly support permanent estate tax reform. Though I do not support completely repealing the estate tax for all estates, I do believe that we should significantly expand the unified credit to exempt the great majority of estates from taxation, and we should do so on a permanent basis. We should also include an indexing provision to ensure that the unified credit does not become obsolete and burdensome again, as happened over the past several decades.

But we should make these changes in a fiscally responsible manner. We should do so without adding to the already enormous budget deficits that were largely the result of the tax bill that was enacted last year.

Our budget position is poor, and it is getting worse. Last year, Congress passed a fiscally irresponsible tax cut that has shoved us back into the deficit ditch. Congress then added to our woes by passing an unfunded stimulus package filled with special interest tax breaks, a farm bill that unnecessarily benefits the largest and wealthiest producers, and just last week, following the action of the House of Representatives, the Senate passed a supplemental spending bill, also unfunded, and also apparently filled with special interest provisions of questionable value. Each of these actions will only further aggravate our budget problems.

Now, proponents of estate tax repeal are asking us to enact legislation that will add even more fuel to the deficit fires. Rather than offering a fiscally responsible measure, with provisions that offset the cost of repeal, the proponents are content to add to our budget deficits, and our already massive federal debt.

In effect, the proponents suggest that we should repeal the tax on the wealthiest estates, and let the Social Security trust funds pick up the tab.

I regret that this is also the case with some of the alternative proposals as well—proposals much closer to the kind of estate tax reform I support. The choices being presented to the Senate are not acceptable. As much as I would like to see a permanent solution to this question, I do not support raiding Social Security to achieve it.

When I was first elected in 1992, we faced an annual budget deficit of $340 billion, and projected deficits of roughly the same size for many years to come. Thanks to the fiscal restraint we demonstrated in the 1990s, and especially to the deficit reduction package we enacted in 1993, we saw a virtuous cycle of lower budget deficits and increased economic growth. The result was that we eliminated the budget deficits and actually began paying down some of the federal debt that was racked up during the 1980s.

We need to return to the fiscal restraint that worked so well during the 1990s. And first and foremost, that means paying our bills. The estate tax repeal is not funded. It digs our deep budget hole even deeper, and we should reject it.

Mrs. BOXER. Mr. President, the estate tax needs to be reformed, but it should not be repealed. Repealing the estate tax would benefit only the extremely wealthy at an exorbitant cost to the American people. We can help small businesses and family farmers by reforming the estate tax. That is the choice before us.

Let's start with a few facts. Ninety-eight of every 100 people who die face no estate tax whatsoever. Only the richest 2 percent of Americans do. Estates worth in excess of $5 million paid about 51 percent of the estate tax in 1998. This tax does not oppress the children of multi-millionaires, they still inherit millions. But it does provide us with funds for investment in the public good. It is completely appropriate that the wealthiest estates contribute some portion in taxes to help create opportunities for others to reach their full potential.

Repealing the estate tax would make the rich richer at a heavy cost to the rest of us. Between 2013 through 2022, permanent repeal of the estate tax would cost us $740 billion. That is $740 billion we could use for homeland defense, investments in education and infrastructure, and to provide the funds to save Social Security and Medicare.

It is true that a few small businesses and family farms are subject to the estate tax. But of the 2.3 million people who died in 1998, just 1,418 of those had more than half of their estates in a family-owned business or farm. We can and should exempt many of these families from the estate tax through responsible reform.

Furthermore, while the estate tax affects a relatively small number of wealthy Americans, it can have a detrimental effect on small businesses and families who live in areas that have high property values, such as Silicon Valley. Under current law, the first $675,000 of one's estate is exempted from Federal tax. In some parts of California, however, where median home prices exceed $500,000, moderate-income individuals must content with taxes paid only by the wealthiest residents in other regions.

I strongly support helping these families by reforming instead of repealing the estate tax. The reform I supported and that Senator DORGAN introduced would make estates of up of $4 million—and $8 million for couples—exempt from the estate tax. And it would permanently repeal the estate tax for family-owned farms and businesses. That is real reform that benefits those who need the help, not another giveaway to the richest among us.

Instead of focusing our efforts on making the very wealthy wealthier, we should be working on helping hard-working Americans and investing in meeting their needs.

Mr. KENNEDY. Mr. President, in January 2001, the Congressional Budget Office projected an on-budget surplus of $3 trillion over the decade. One year later, the projection is for a $242 billion on-budget deficit. The largest single reason for that stunning change is not the cost of the war on terrorism nor the recession, it is the $1.7 trillion cost of the President's tax cut. The administration's proposed budget this year would make the existing crisis far

worse, dramatically expanding the deficit to nearly $1.5 trillion. The Social Security trust fund would be used to cover an on-budget shortfall every year through fiscal year 2012.

Just yesterday, at the urging of the administration, we voted to raise the debt limit by $450 billion. That increase will only carry us until next spring. The Treasury Department has already said that we will have to raise the ceiling on government borrowing again early next year. Despite the overwhelming evidence, it seems that some of our colleagues across the aisle remain oblivious to the connection between the larger and larger tax cuts they espouse and the growing deficits that inevitably result.

Why, in this time of budgetary crisis—when the war on terrorism is making making new demands on our resources, and when the enormous cost of the retirement of the baby boom generation is looming just over the horizon—should we be considering another large tax cut for the wealthiest taxpayers? There is no good answer.

Permanent repeal of the estate tax is unaffordable. In the first year, full repeal will cost $56 billion. Over the decade beginning in 2012, the estimated revenue loss to the Treasury is $740 billion.

Permanent repeal of the estate tax is unfair. While it benefits only the wealthiest 2 percent of taxpayers, each year it will consume billions of dollars which are needed to finance Social Security and Medicare benefits for millions of retirees.

Permanent repeal of the estate tax is unnecessary. Currently, all estates under $1 million are exempt from the estate tax. That exemption will rise to $3.5 million under existing law. At that point, only the largest one-half of 1 percent of estates will be subject to the tax. Making that higher exemption level permanent will protect the vast majority of the family farms and family owned small businesses. Their estate tax will be zero.

Permanently repealing the estate tax, as our Republican colleagues proposed, would be the triumph of reckless ideology over fiscal prudence. It would jeopardize our ability to meet the Nation's most fundamental responsibilities in future years.

In the Bush administration's budget, in a section titled ''The Threat to the Budget from the Impending Demographic Transition,'' it states: ''In the years that follow [2008], the population over the age 62 will skyrocket, putting serious strains on the budget because of increased expenditures for Social Security and for the Government's health programs which serve the elderly—Medicare and increasingly Medicaid.''

The resources which will be lost to the Treasury by repeal of the estate tax are essential to financially strengthening Social Security and Medicare. Dedicating the revenue from the estate tax to the Social Security and Medicare trust funds would go a long way to securing those programs fro future generations of senior citizens. Over the next 75 years, revenue generated by the current estate tax would be equivalent to nearly 40 percent of the shortfall in the Social Security Trust Fund. Those dollars should go where they are needed most—to preserve the promise of Social Security for future generations of retirees.

While the advocates of permanent estate tax repeal are reluctant to admit it, this vote is really about the financial future of Social Security and Medicare. Repeal would be a windfall for the wealthiest few at the expense of our ability to keep Social Security and Medicare strong for all seniors. Do we choose to commit hundreds of billions of dollars to cover the cost of estate tax repeal or to maintain Social Security and Medicare for future retirees?

In the year 2000, nearly 40 million Americans received Social Security retirement benefits. With the retirement of the baby boomers, that number will steadily grow. By 2010, it will exceed 50 million. In comparison, fewer than fifty thousand of the largest estates paid any estate tax in 2000. That was just 2 percent of decedents. With the increase of the estate tax exemption to $3.5 million by 2009, the number of estates paying tax will be further reduced to about 10,000 a year. Just one-half of 1 percent of estates will be subject to the estate tax.

Which group needs our help more—the 50 million men and women counting on Social Security or the heirs of the 10,000 wealthy decedents with multi-million dollar estates? I believe the answer to that question should be clear to all.

Those who most passionately decry the ''unfairness'' of taxing multi-million dollar estates are strangely silent about the unfairness of jeopardizing the retirement benefits of low-wage workers or the unfairness of forcing elderly widows to choose between food and medicine. Which of these injustices should move the Senate to action?

Many bogus claims have been made to distract attention from the real fairness issue. Those advocating permanent repeal claim it is ''double taxation.'' In fact, a major portion of the assets in these multi-million dollar estates are unrealized capital gains which are never taxed. Those favoring repeal assert the Federal Government takes more than half of all the assets in these estates. This too is incorrect. The Congressional Research Service analyzed the Federal estate tax burden on estates that were subject to taxation in 1999 and determined that the effective rate was just 12.4 percent. On the largest estates, those over $20 million, the effective rate was 17.6 percent. These are certainly not unreasonable rates to ask the richest men and women in the Nation to pay.

There appears to be a consensus in the Chamber to permanently exempt estates up to $3.5 million from taxation. That feature is common to all the proposals. I support it. So, in essence the debate is whether the Federal Government should tax estates larger than $3.5 million. Do those who have been given the most—the heirs to these fortunes—have a special obligation to help the less fortunate members of the American community? That is the real fairness question before the Senate today.

Mr. MCCAIN. Mr. President, I rise today to speak on H.R. 8, the Death Tax Elimination Act. I want to take this opportunity to explain my opposition to making permanent the repeal of the Federal estate tax.

Last year, the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107–16) repealed the Federal estate tax by 2010. It accomplished this by gradually raising the ''unified credit'' which is the amount of the estate exempt from taxation, from $675,000 in 2001, to $1 million in 2002; $1.5 million in 2004; $2 million in 2006; and $3.5 million in 2009 and finally repealed the estate tax by 2010. However, the estate tax will be reinstated in 2011 as it exists under current law. The Death Tax Elimination Act removes the sunset on repeal and makes the repeal of the estate tax permanent from 2010 onwards with no cap whatsoever.

I am concerned that repeal of the estate tax would provide massive benefits solely to the wealthiest and highest income taxpayers in the country. A Treasury Department study found that almost no estate tax has been paid by lower and middle-income taxpayers. But taxes have been paid on the estates of people who were in the highest 20 percent of the income distribution at the time of their death. It found that 91 percent of all estate taxes are paid by the estates of people whose annual income exceeded $190,000 around the time of their death.

During this time of increasing deficits, we should also be mindful of the very high cost of providing those benefits and our ability to pay for them. The Joint Committee on Taxation estimates that removing the 2010 sunset and making permanent the repeal of the estate tax would cost $99 billion between 2003 and 2012. But more than half of this cost or $56 billion would occur just in 2012. The long-term costs of permanent repeal are much larger. In the decade after 2012, permanent repeal would result in a revenue loss of $740 billion assuming that the cost which the Joint Tax Committee estimates for 2012 will remain the same after 2012, when measured as a share of the economy.

Another concern I have is that repeal of the estate tax will cause a significant decline in charitable giving. I fear that eliminating the estate and gift tax would remove an enormous tax incentive for the wealthy to make charitable gifts. The research on the effect of the estate tax on charitable giving has consistently shown that levying estate taxes increases the amount of charitable bequests. A recent study found

that eliminating the estate tax would reduce charitable bequests by about 12 percent overall.

Taking these issues into account, instead of repeal of the estate tax, I support increasing the ''unified credit'' to allow up to $5 million worth of assets to be exempt from taxation. I believe this cap is a reasonable amount. For example, according to data from the IRS, more than 93 percent of taxable estates in 1999 were valued at less than $5 million. Farm and family-owned business assets accounted for less than three percent of the total value of these estates in 1999. In most estates that are taxable and include a business or farm, the business or farm does not even constitute the majority of the estate. In fact, the American Farm Bureau Federation has acknowledged that it could not cite a single example of a farm having to be sold to pay estate taxes. These facts belie the argument that we must repeal the estate tax to save family businesses and farms to assure that they do not have to be liquidated to pay estate taxes.

Responsible estate tax reform, instead of outright repeal, would ensure that small and family-owned businesses and family farms will not be taxed out of business in the event of the death of an owner or when passed along to the owner's children. Responsible reform would alleviate individuals and businesses from being forced to spend time and money on estate planning.

Even some of the Nation's wealthiest taxpayers such as Warren Buffet, Chairman of Berkshire Hathaway, and Bill Gates, Sr., father of the billionaire Microsoft founder, have gone on record as opposing the effort to repeal the estate tax. And in calling for the inheritance tax in his 1906 State of the Union Address, President Theodore Roosevelt said, ''The man of great wealth owes a peculiar obligation to the State, because he derives special advantages from the mere existence of government.''

We have no idea what our financial or economic situation will be ten years from now. We may be at war. We may be in the process of putting Social Security on a sound financial footing. We may want to have the flexibility to provide significant tax relief for lower and middle-income taxpayers. Other unforeseen issues may arise. The point is that we must think beyond the horizon. Making the repeal of the estate tax permanent fails to take these new circumstances into account.

We will need resources to deal with national security, general government funding, the coming baby boom retirement and the rising costs of Social Security and Medicare, and responsible tax reform that benefit lower- and middle-income taxpayers. But we must fund these priorities within our constrained budget situation. Reforming the estate tax rather than committing ourselves to full repeal is the more sustainable and responsible approach.

Mrs. FEINSTEIN. Mr. President, I rise to address the Gramm/Kyl amendment to H.R. 8, the estate tax repeal bill.

I want to first say that I am philosophically opposed to the estate tax, and have long expressed my belief that it is an unfair tax that we should ultimately do away with.

In addition to threatening owners of small businesses and family farms, the estate tax acts to stifle investment in businesses, and is a disincentive for those who want to save so that they can pass assets on to their children and grandchildren. However, to vote in favor of repeal today, under our current circumstances, runs counter to another of my deep philosophical beliefs: fiscal responsibility.

Last year I voted to support the President's tax cut package, which provides $1.3 trillion in tax cuts over the next decade. My support for that bill was partially determined by the estate tax relief provisions included within it. When I voted in favor of that bill, we were projected to benefit from some $5.6 trillion in budget surpluses over the coming decade, enabling us to provide significant relief to American taxpayers while also protecting the Social Security trust fund and programs in health, education, and numerous other areas.

Needless to say, that outlook has changed dramatically in the past twelve months. The economic slowdown, combined with major new expenses associated with providing for homeland security and fighting the war on terror, have put a major strain on the federal budget, requiring Congress to exercise a degree of fiscal responsibility not seen during the late 1990's.

Despite the threat of a budget deficit of over $125 billion this year, and projected deficits stretching through the end of the decade, House Republicans have made clear their intent to push through a permanent extension of all of the tax cuts included in the President's bill last year. The first of those extensions, and the one that we are considering today, is a permanent repeal of the estate tax.

Yet there could not be a worse time to consider full repeal of the estate tax than right now. The latest estimates project full repeal of the estate tax will cost the federal government over $740 billion between 2011 and 2020. Although it is my hope that we will be able to permanently extend the repeal at an appropriate time before it is set to expire in 2010, we are in no position today to do that and cope with major outlays for defense and homeland security, as well as threats to funding for Social Security and Medicare.

Earlier today, I voted in support of Senator DORGAN's amendment as a good compromise on this issue, and because it goes a long way toward addressing one of my major concern with estate tax: that it puts family-owned businesses and farms at risk of sale or closure simply because heirs are forced to sell in order to pay the estate tax bill.

In addition to permanently extending an increased unified credit of $4 million per individual and $8 million per couple, Senator DORGAN's amendment provides relief to small business and family farm owners who suffer the most under current law by providing an unlimited exemption from the federal estate tax to small business owners and farmers. This would ensure that this tax no longer threatens anyone wishing to pass on a family-owned business to his or her heirs.

Under current law, the unified credit is set to increase to $3.5 million by 2009, but the Qualified Family Owned Business Interest exemption will expire in 2004, removing what few safeguards are in place to protect those whose assets are tied up in family-owned farms or businesses.

I am particularly concerned about protecting these businesses because of the relatively high value of California farm land. The value of an orange grove in Ventura, CA may be as high as $15,000 per acre due to local development pressures, compared with a price of $1,500–2,000 per acre for corn-growing land in a mid-western state.

As a result, even a medium-sized California farm of 400 to 500 acres may be liable for a hefty estate tax bill, especially when the value of farm buildings and other capital investments are factored in.

The estate tax may make it impossible for a family farm to be passed down from generation to generation. No one should be forced to sell the family farm just to pay the estate tax.

Small business owners are equally at risk, and those who own and operate capital-intensive businesses must bear an exceptional burden. While the issue of small business liability under the estate tax has often been represented as affecting a tiny minority of Americans, in fact there may be many small business owners who sell or transfer their businesses in expectation of their heirs having to pay the tax.

Additionally, the sale of family-owned businesses, particularly to larger conglomerates, threatens the jobs of thousands of Americans who are employed by those businesses. Even those businesses that can cover their tax liability may have to take on a large debt burden that threatens their competitiveness and delays efforts to expand or grow the business.

The Dorgan amendment would have resolved this problem by uncapping the Qualified Family Owned Business Interest exemption entirely, but it also would have raised the individual exemption to $4 million in 2010. By providing this much-needed relief, the amendment would have limited estate tax liability to a tiny fraction of wealthy Americans who have large holdings of marketable assets.

Regrettably, the Dorgan amendment did not pass, and we are faced with an unfortunate choice between full repeal

and the limited relief passed as a part of the President tax package last year.

I very much look forward to a time when the Senate can vote for full repeal of the estate tax with a clear conscience, knowing that a vote to repeal the estate tax is not a vote against fiscal responsibility. To vote for full repeal today would be to turn a blind eye to such responsibility, and to move forward guided only by the kind of irrational optimism that was so readily propounded only a year or two ago.

Mr. DASCHLE. One year ago, America had a projected budget surplus of 2.7 trillion dollars over the next 10 years.

The stock market was soaring.

The question before us was one that most leaders could only dream of: ''What should we do with our prosperity?''

At that time, the debate was focused on tax cuts, how much, for whom, and could we also provide for America's unmet needs?

Nine months ago yesterday, more than 3,000 innocent men and women lost their lives to terrorism.

In the months since, an anthrax attack and recent disclosures have revealed holes in our homeland security. The collapse of Enron has raised questions about our system of corporate governance and we are soon to begin perhaps the most dramatic restructuring of government in half a century.

All of this has occurred against the backdrop of massive demographic changes that will transform the face of our nation for decades to come.

In 2008, the first of the Baby Boomers will begin retiring. By 2015, 50 million seniors will be drawing benefits from Social Security. Prescription drugs are becoming a more and more vital part of American health care, and we need to find a way for Medicare to help pay for them.

At the same time we're facing a senior boom, we're also facing a youth boom. School enrollments are already at record levels, and will continue to rise every year for the next 8 years.

So here is where we are: The surplus is gone.

The Treasury is borrowing money and spending Social Security funds to pay for the daily functions of government.

We have just passed a bill to allow America to take on even greater debt. The baby boomers are preparing to retire.

More children than ever are moving through our schools.

Investors have had their confidence in American business shaken.

We are in the midst of confronting new—and previously unimaginable threats to our nation.

We are at war.

The question facing America is no longer, ''What should we do with our prosperity?'' The question now is: ''How do we protect our citizens, strengthen an ailing economy, prepare for the future, and win this war against terrorism?''

I believe history will judge this Congress by how well we answer that question.

And I believe every action we take should keep those four key goals in mind.

Today, we are debating, once again, what seems to be the Republican Party's only solution to all of these problems—more tax cuts.

Specifically, we are debating a permanent repeal of the estate tax, an idea that could not be more at odds with the priorities of the nation at this critical time.

It is bad public policy. It is unfair. It will undermine Social Security, depress American philanthropy, hurt state budgets, and make it more difficult to meet every other challenge we face.

And I want to be especially clear that there is a vast difference between fairly protecting family farms and small businesses on one hand, and blindly destroying our fiscal balance on the other.

Repealing the estate tax will cost $99 billion over the next decade, and $740 billion in the decade after that.

Most of that will come from the Social Security trust fund. If you look out over the next 75 years, the cost of repealing the estate tax will account for nearly 40 percent of the entire shortfall in the Social Security Trust Fund.

And who benefits? The wealthiest two percent of American estates. By 2009, it will be the wealthiest one half of one percent of all estates.

What we're talking about is diverting the Social Security contributions of millions of American workers to fund a massive tax cut for the most fortunate of the fortunate few.

And sometimes it's the fraudulent few.

Yesterday, Senator CONRAD had a chart here on the floor showing Jeffrey Skilling, a former CEO of Enron, stands to gain $55 million from the repeal of the estate tax. That $55 million will be composed of the Social Security contributions of 30,000 working Americans earning $30,000 a year.

We've been hearing a number of arguments in favor of estate tax repeal from our Republican colleagues, so let me just take a minute and address a couple of the issues they raise.

They argue that the estate tax forces the sale of family farms and businesses. Some agriculture organizations have said that it is important to repeal the estate tax, but when asked if they could cite when asked if they could cite a single example of a farm lost because of estate taxes, they couldn't name one, not one.

As Neil Harl, an Iowa State University economist who has studied the issue extensively, said simply, ''It's a myth.''

And here's why: in Iowa, the average farm is worth $1.2 million. In South Dakota it's just over $500,000. Family farms simply do not fall victim to the estate tax.

The same goes for family businesses. In the few cases where family businesses are subject to the estate tax, it is usually because that business is just one part of a larger estate.

But just to make sure that family farms and small businesses aren't hurt, we're proposing an alternative that will exempt virtually every family farm and small business from the estate tax.

Family farms and small businesses define us as a nation. We've never seen it demonstrated that they are being broken up by the estate tax, but, just in case, we're going to see to it that they never will be.

Others have argued that the estate tax is un-American, that it is a penalty for success. The history of the estate tax shows the exact opposite is true.

Not only does the estate tax encourage economic success based on merit rather than birthright—it is a demonstration that those who have done well by this nation have a special obligation to contribute to its continued success—and its defense.

In his 1906 State of the Union, President Theodore Roosevelt, a Republican, proposed the estate tax to help finance the war debts of the 19th century, saying, ''The man of great wealth owes a peculiar obligation to the State, because he derives special advantages from the mere existence of government.''

To single out the estate tax for elimination in the midst of this current war goes against the intent, and the history, of this policy.

Those arguments may be false. But there are some powerful and disturbing truths about making the estate tax repeal permanent.

In the short term, it costs $99 billion.

Just yesterday, we passed an increase in the debt limit in part so we could meet the new security demands we're facing in an increasingly uncertain and threatening world.

If giving a handful of multi-millionaires and billionaires another tax break requires a choice between more debt and less security—that should be a clear signal that the price is simply too high.

In the longer term, we will feel the full brunt of this repeal at exactly the time the baby boomers begin to retire. We know that, 10 years from now, we are going to need some fiscal flexibility to start paying the retirement benefits to the biggest retirement population that's ever passed through the system, and yet some want to succumb to fiscal irresponsibility at precisely the time we can least afford it.

We have all heard the old saying, ''When you find yourself in a hole, stop digging.''

Well, it is time for us to stop digging a deeper hole, and start getting serious about the problems we face.

Last March, a farmer named John Sumpton, from Frederick, SD, came to testify before the Senate Finance Committee.

''Mr Chairman,'' he said, ''I am not an expert on tax law, but I know about family farmers. They are my friends and neighbors. They are not worried about estate taxes, because, for the most part, they don't have to pay them. They are worried, however, about the prices they receive for their crops and livestock, about good public schools for their kids, about local community services, paying for prescription drugs, and being able to pay their bills in retirement. And, of course, they are always worried about the weather.''

He continued: ''I fear we may not be able to do the things we want and need for our communities if we repeal the federal estate tax. To me, it doesn't seem responsible to eliminate the estate tax for everyone, including billionaires, when they don't need the help. A more targeted approach that helps families better address this issue now, while retaining more resources for other needed public investments to improve our future, seems a more practical and appropriate course of action.''

John Sumpton is right.

And I hope the Senate will heed his sensible advice.

Mr. CONRAD. Mr. President, I yield 2 minutes to the Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I thank my colleague for yielding me this time.

As did a number of my colleagues in the Senate, I served as the Governor of my State before I was privileged to come to the Senate. As a Governor of my State, I was a supporter of tax cuts. We cut taxes for 7 years in a row. In fact, we eliminated the gift and inheritance tax altogether. While we cut taxes 7 years in a row, we also balanced the budget 8 years in a row. We also were able to slow the growth of debt in our State. We earned ourselves a AAA credit rating for the first time in Delaware history.

Others have spoken to the equity and the fairness of eliminating altogether the estate tax. I will leave those arguments to those who have already spoken. I simply want us to keep this in mind. There is an old theory called a theory of holes. It goes something like this: When you find yourself in a hole, stop digging.

To have voted yesterday to raise the debt ceiling by another $450 billion and then to turn around and cut taxes in a way that will only increase our indebtedness is a matter of concern to me and ought to be to all. Our Republican friends are right: We cannot simply be opposed to cutting taxes in ways that perhaps are unfair in this case and turn around and simply vote to increase spending.

I had a good long conversation with one of our Republican colleagues on the phone last night about this body and about our propensity to spend ever more money for defense, for homeland defense, more money for social programs, good social programs, and at the same time, voting to cut taxes. It does not add up. I do not know how to stop it.

I want to put down a marker today and say it is something that is not a sustainable policy, and one I hope we will not continue.

Mr. CONRAD. I yield 3 minutes to the Senator from New Jersey.

The PRESIDING OFFICER (Mr. WELLSTONE). The Senator from New Jersey.

Mr. CORZINE. Mr. President, I rise to speak strongly in opposition to the Gramm amendment. I am in the group of folks who believe we need reform, not repeal. There are some positive things we should do with respect to the estate tax. However, I find it terribly difficult knowing the meritocracy of America that I think provides opportunity to all, that we are voting to create something that is against the principles and buildup of aristocracy, contrary to at least the America I understand.

I believe that is why we have seen many people who have benefited so much from our society because they have been able to live in a free America where they had access and equal opportunity and a public educational system, infrastructure that worked positively for folks, that they feel very strongly there is a responsibility to give back by those who have been blessed with their lives.

Quite frankly, it is one of the things that helped in my own life. I think about the schoolteachers in the rural community in which I grew up who gave me the access to the American promise. I believe America is about meritocracy, not aristocracy. It is about community, and community-wide interests—not just the interest of the few.

We have heard the statistics about how narrow a slice of America benefits from this action. This is a period of sacrifice in America, when we are asking men and women to go overseas to protect us. We are asking others to sacrifice on our investments in education and our protections in the environment and all kinds of things that make sense in a choice situation, to go in a direction where the few are benefited to the exclusion of the many. This is very difficult.

I would be remiss if I did not bring it up in the context of something about which I deeply care; that is, protecting the integrity of our Social Security and Medicare systems. People will say there are other choices on spending. But we have a very clear choice where we provide for those who benefited the most from the American system to be able to use our Social Security funds and Medicare funds that we raise and directly expend it on something that, in a period of sacrifice, is hard to understand—why our priorities and why our choices are here.

This is a moral issue about priorities in this Nation, making sure we are funding special education.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent the time for debate on this matter be extended 10 minutes equally divided.

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

Mr. CONRAD. Mr. President, I close debate on our side by pointing out that we are not making these decisions in a vacuum. We have to consider the fiscal condition of the country when we make any spending decision or any additional tax cuts.

The fact is, last year we were told we had trillions of dollars of surplus over the next 10 years. Now we see those surpluses are gone. They have evaporated. Instead, we are going to be running massive deficits—this year, a $320 billion deficit.

The Senator from Oklahoma said it would be unconscionable to keep this tax. I think it would be unconscionable to drive this country into deeper deficit and deeper debt. That is precisely what the amendment of our colleagues on the other side does. It is very clear the cost of estate tax repeal explodes in the second decade. Not only does it cost $100 billion in this decade, every penny of which is coming out of the Social Security trust fund, but in the second 10 years, it costs $740 billion right at the time the baby boomers start to retire, right at the time there will be unprecedented demands on Social Security and Medicare and, God forbid, on the needs of the defense of this Nation.

This is the most irresponsible amendment offered on the floor of the Senate this year. It would gut the fiscal condition of this country when we know it is already teetering.

Instead of repeal, we ought to reform this tax. Yes, the estate tax bites at too low a level. So I recommend in my amendment we give an exemption of $3 million for an individual, $6 million for a couple, beginning next year. For 2009 and thereafter, the exemption increases to $3.5 million for an individual, $7 million for a couple. This saves hundreds of billions in the second decade and saves huge amounts of money in this decade, as well. By 2009, only .3 of 1 percent of estates face any estate tax liability under my amendment.

In this decade, there is a big difference between these two approaches, the cost of the Republican proposal is $99.4 billion; the cost of my proposal is $12.6 billion.

Under my proposal only .3 percent of estates in this country are subject to tax. Not only is it a question of affordability, it is also a question of fairness. Again, my colleague from Oklahoma says it is unconscionable to ask the wealthiest among us to contribute to the fiscal health of the Nation. I don't think it is unreasonable.

President Theodore Roosevelt, one of the greatest Republican Presidents, did

not think it was unreasonable. President Abraham Lincoln, one of the greatest Republican Presidents did not think it was unreasonable. I think it is unreasonable to say to the American people that we ought to give Mr. Skilling, who ran Enron, a $55 million tax cut and finance it by asking 33,000 Americans, earning $30,000 a year, to put all of their Social Security taxes into the pot so we can give Mr. Skilling a $55 million tax cut.

I do not think that is fair. Not only do I not think it is fair, the American people do not think it is fair. In a poll released today by the Fair Estate Tax Coalition, they showed that 58 percent of the American people favor reform over repeal. Mr. President, 37 percent favor repeal, 58 percent favor reform.

It is very interesting; in this poll what they found, under Federal budget priorities, is the people of this country overwhelmingly say strengthening Medicare and Social Security is No. 1, 38 percent; increasing spending for education, 33 percent; giving seniors a prescription drug benefit, 29 percent; increasing funding for children's health, 18 percent; retiring the national debt, 16 percent; cutting taxes, 16 percent.

What tax cuts do they favor? And that is only 16 percent of the American people who say that is their priority; eliminating the estate tax is the bottom of the barrel. They prefer cutting taxes for moderate- to low-income Americans, eliminating the marriage penalty, a capital gains tax cut; dead last is eliminating the estate tax.

This is a fundamental question. Presidents Abraham Lincoln, Theodore Roosevelt, Woodrow Wilson, and Franklin Roosevelt supported inheritance taxes because without them this country would move further from democracy and closer to aristocracy.

This is a fundamental misunderstanding of the heritage of America. Meritocracy, not aristocracy; reform yes, repeal no.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Texas.

Mr. GRAMM. How much time do we have, Mr. President?

The PRESIDING OFFICER. Twenty minutes, twenty-five seconds.

Mr. GRAMM. Why don't I take 10 minutes, and I will give my colleagues 10 minutes.

Let me just begin by sort of straightening a little history out. The death tax started in America through a Stamp Act on wills when we had an undeclared war with France. It was repealed right after the tensions with France ended but was reimposed during the Civil War. Abraham Lincoln did not impose a death tax because he wanted to take away people's inheritance in America. He imposed it, along with a lot of other taxes before we had an income tax, to try to save the Union. It too was repealed when the war was over.

We reimposed the death tax during the Spanish-American War, and repealed it when the war was over. Finally, it was imposed during World War I. We had a battle between the President and the Congress over the League Of Nations. It ended up not being repealed, and it still plagues us today. That is the history of the death tax.

Let me also say to my colleagues that this is an old issue and it is an old issue between the two great political parties. In 1981, when Ronald Reagan came to Washington, part of his tax cut was to raise the exemption—the amount of wealth in your business or your farm or your estate you could protect from taxes—from $175,000 to $600,000. The same arguments made by the same Democrats were made at that time. They said it was wrong to raise the exemption to $600,000. Had they prevailed 20 years ago, the exemption would be $175,000 today.

Ten years ago, Congressman GEPHARDT and Congressman WAXMAN proposed lowering the exemption—that is, the amount of your farm or your business or your estate that you could pass to your children without it being taxed—from $600,000 to $200,000.

Our colleagues basically admit this is a cancer on the economy—but they only want to take part of it out, not all of it out. The problem is, 10 years ago members of their party were trying to lower the deductible and raise the tax. We want to take the whole cancer out because we believe it will come back if we do not.

Finally, in 1997—which is not that long ago—32 Democrat Members of the Senate voted against raising the exemption to $1 million.

We have had a lot of talk today about rich folks and who is rich and who is not rich. Sometimes it is awfully hard to tell. But I do want to use this figure. Iowa is a farm State. They have 80,000 farms. It is estimated that 30,000 of those farms today are valuable enough that if the owner of the farm died, their children would have to pay a death tax. That is almost 40 percent of the farms in Iowa.

Look, there are some people who are bothered by the fact that some people become successful in America and make money. I am not one of them. If someone became very rich, started a business in College Station, had 200 employees, had $10 million worth of machines and plant and equipment and trucks, and they died—our Democrat colleagues say they are rich. But is America richer if we take $5.5 million from them, make them sell the business, sell the trucks, sell the equipment, make their children do all that to give the Government $5.5 million in taxes? Are we not better off leaving that $5.5 million at work in College Station than we are destroying that business and bringing it to Washington?

Sure, the family is rich. But is America richer or poorer by destroying it? Can we build up one family by tearing down another? I do not think so.

I mentioned earlier in the debate—I want to mention it again—I have been bequeathed only one thing in my life. My Great Uncle Bill, my grandmother's brother, died and left me in his will a cardboard suitcase. I am proud to say I still have it today. It had yellow sports clippings from the 1950s in it. If they had been baseball cards, I would be a rich man today.

If all my relatives I know of left me everything they own, I do not believe I would qualify to pay the estate tax.

So why do I feel so strongly about repealing the death tax? For the simplest of all reasons—it is wrong. It is wrong. It is not right, no matter whether somebody is Bill Gates or Dicky Flatt, who owns a print shop in Mexia, TX, and who never gets that blue ink off the end of his fingers. It is wrong, when they die, to make their children sell off their life's work to give Government 55 cents out of every dollar they have accumulated in their lives. They work, they save, they scrimp—Dicky Flatt gets up early in the morning, he works on Saturday. Everything he owns he plows back into that business. He sent his children to Texas A&M. They have come back into the business.

Dicky's daddy worked there, his momma worked there, he works there, his wife works there, his son works there, his son's daughter worked there, and they plow everything they can back into their business. I do not know what it is worth. But I know whom it belongs to. I know who built it.

How is it right, after they have done all that work, made all those sacrifices, scrimped and saved, lived far below the level they could live if they chose to spend their money—why is it right to take it away from them just because they earned it? That is what this issue is about. It is not about being rich versus being poor. It is about right versus wrong. It is wrong when people who pay taxes on every dollar they earn, who have plowed it back into their businesses or farms or estates, to destroy all that when they die.

Death should not be a taxable event. It is hard enough to face dying, without having to know that your children are going to lose what you have built.

Every day, people are spending billions of dollars to try to get around this tax. Talented people are retiring when they are 55 years old because they know the Government is going to take the fruits of their labor away from their children. People are selling off farms to try to plan their estates. They are shutting down businesses to divide up the assets ahead of time so they do not have to pay the taxes, and America is poorer for it.

We have heard a bunch of speeches from my colleagues. They believe what they believe. I believe what I believe. Who is to say who is right?

But I will say this. Over and over, we have heard people get up on the floor and say we can't afford this. I would just like to remind my colleagues that last Thursday—I hope I am not stretching their memory—last Thursday we

spent $14 billion the President did not ask for, for nonemergency matters. That is four times as much, over the next 2 years, as repealing the death tax permanently would cost. So the same people who say we cannot afford to make the repeal of the death tax permanent, they could afford to spend four times that much last Thursday on unrequested programs, but they cannot afford it today.

When we passed the farm bill, they could afford to spend seven times as much as it would cost next year to repeal the death tax, but they can't afford it today.

On the energy bill, they could spend more than enough to pay for it, but they can't afford it today.

When we added all those riders to the trade bill, they could spend more than it would cost next year to repeal the death tax, but they can't afford it today.

When they wrote this budget, they asked for $106 billion of new discretionary nondefense spending. We have heard all of this talk about the war and fighting the war. When they wrote this budget, they spent $106 billion more than the President asked for. Yet today they cannot afford to make the death tax repeal permanent.

It is a matter of priorities. It is a matter of what you think is of a higher order.

What my Democrat colleagues, with very few exceptions, have said indirectly, without saying it just flat out, is the following: They are willing to force people to sell off their businesses and farms to give the Government the money because they want to spend it. They think that is more important than leaving those businesses and farms intact.

I believe they are wrong. I believe the American people believe they are wrong. I think this is something that we need to do. I commend it to my colleagues.

I yield the remainder of our time to my colleague from Arizona. I thank him for his leadership on this issue.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I compliment the Senator from Texas for sponsoring this amendment and for making the arguments which I believe will result in this body finally voting to making permanent what we voted for just a year ago.

I want to remind my colleagues that 48 Republicans and 12 Democrats—56 of us in all—voted to repeal the death tax. There were two other Republican Senators who were not here but would have voted to do that. That is 58 of us. It passed in the House of Representatives. The President signed it into law.

By now we all know, however, that because of the rules under which we operate, all of the tax relief we provided sunset at the end of 10 years.

It is for that reason only that we have to come back and revisit this today. The good news is we have a chance today to make what we did before permanent.

I submit that unless Senators want to say to their constituents, ''I was just kidding when I voted to repeal the death tax,'' that those who voted to repeal it before are going to have to vote to repeal it again, and this time to make it permanent, or else we will perpetuate this hoax.

I have heard a lot of talk about meritrocracy and aristocracy. I would like to talk about the American dream.

I prefer to go back a couple of generations when immigrants came to this country. They brought the ethic of hard work and savings and investment. By the way, investment means job creation. We all know that. But they worked very hard because they wanted to be able to give their kids and their grandkids a better chance and more opportunity than they themselves had.

That is what this country is all about. That is why people have sacrificed a lot—as Senator GRAMM said, to be able to leave their kids something. That is the American dream.

When we talk about doing something for the rich, they are not listening to the debate. The rich man died. He is not rich anymore. He is not even alive anymore. He died. So who pays the death tax? His kids, usually. Who are they? Are they rich people?

I have said this before. Let me say it again. This is from the Internal Revenue Service. These are the official statistics of the IRS. They answer the question about who actually pays. They break it out by men and women. This, by the way, is their latest statistics, Statistics of Income Bulletin, Summer of 1999, pages 72–76.

The largest group are men: 27.7 percent were administrators, upper management, and business owners. That you would expect. That is only 27 percent.

Who is the next group? The second largest group of men, 12.3 percent, were schoolteachers, librarians, and guidance counselors—these filthy rich who deserve to be punished. Maybe their dad had accumulated a lot of wealth. These are not rich people. But their dad is maybe giving them an opportunity to invest some of that money, maybe, to start a small business of their own, or to do something more with it to create jobs and to help make this American dream come true.

How about women? As we know, the majority of small businesses in this country are owned by women. For females, the IRS statistics say that the largest group—14.1 percent—were educators and teachers. These are people who are paying the death tax. These are the women who are paying the death tax.

The next largest group—9.6—were in clerical and administrative support occupations.

If you want to analyze all of the occupations, a significant number of the estate tax filers were scientists, sales people, entertainers, airline pilots, military officers, and mechanics. These are the estate tax filers.

These are the people we want to punish. It is not fair. These people deserve to be treated just as fairly as anybody else in this country.

Again, according to the Internal Revenue Service, in 1999, 116,500 estate tax returns were filed; 60,700 of those—in other words, more than half—were filed by estates with values of less than $1 million. For estates valued between $1 million and $5 million, 50,600 were filed. That is just about all that is left. Above $5 million, there were only 5,200 of those estates.

Even combined, the millionaires filing do not exceed the nonmillionaires filing.

The vast bulk of these, in other words, are by people who do not have these multibillion-dollar kinds of patina, or even multimillion-dollar kinds of patina that people would like to create.

What kind of people are they? What is their money? The Senator from New York talked about the salaries of all of these rich entrepreneurs. They are paying income taxes on those salaries, I might add. We are talking about the estate tax, the death tax—not income tax.

I talked this morning about Brad Eiffert who with his dad owns the Boone County Lumber Company in Columbus, MO. He doesn't make very much in salary every year. They do not have any cash to speak of because they put all of their money back into the Boone County Lumber Company. They go to the bank and borrow money to buy lumber which they sell. They buy trucks and forklifts.

They do the same thing we do. We don't go out and buy a house with cash. We go get a mortgage loan from the bank.

For much of what they own they have borrowed the money. But they make enough money to pay themselves a salary to live on—the dad and the son—and to hire 30 people whose salaries they pay. That is 30 more families that benefit. When the dad dies, Brad is concerned that he doesn't have the cash around to pay half of the value of the estate. It is not his income that gets taxed. It is the value of the entire business; that is, all of the lumber inventory, trucks, forklifts, the warehouse, and the whole thing.

Take that whole value and he says: I don't have that much money to pay half of that to Uncle Sam when my dad dies. Where am I going to get it? I can't borrow. I am fully leveraged. I have done the financing. I will have to sell the business to pay the tax.

That is what this is all about. That is why it is so unfair.

Job creation—well, those jobs are gone. I suppose if you sell it to somebody else and the idea is to prevent the accumulation of wealth, you usually sell it to a large corporation. So instead of a family business, you have some large conglomerate that may let

people go and consolidate, or whatever. So much for the American dream. So much for consolidation of wealth.

How would you say this money ought to be taxed, somehow or other? My colleague from Texas already pointed out that income tax has been paid on it.

But I don't think what our colleagues realize is, we don't just repeal the estate tax, we substitute another tax for that, the capital gains tax, but with a big difference. Most of us agree that death should not be a taxable event. You did not have any choice in the matter, of the timing of it, how it happened, when it happened, and so on. You do have a choice over when you sell something or don't sell it, and you know what the tax consequences are.

So when your dad dies, instead of the kids having to pay a tax on half of the value of his estate, and having to sell assets to do it, and so on, under our proposal the estate passes to the heirs. They take the property. They do not pay the tax on death day. But when they sell any of it, they pay a tax. They pay a tax on the capital gains, and it is calculated on the basis of dad's purchase price. So that is how you pick up the revenue.

Mr. President, 60 percent of the American people realize this is unfair, and three-fourths of them say they favor its repeal, even though they would not benefit at all. They understand the unfairness of the existing tax.

We now have an opportunity to make permanent what we passed before, which is the repeal of the estate tax, and to substitute for us the very fair capital gains tax on the original basis of the property. That is what we have the opportunity to do. The House of Representatives has passed this measure. If we pass it today, it goes to the President, and he can sign it. He has asked us to send it to him so he can sign it, to end this unfair tax and replace it with a fair tax.

I urge my colleagues to vote against the Conrad amendment, to vote for the Gramm-Kyl amendment, and to have a fair tax in the United States.

The PRESIDING OFFICER. Time has expired.

AMENDMENT NO. 3831

Under the previous order, there are 5 minutes of debate evenly divided before a vote with respect to the Conrad amendment.

The Senator from Texas.

Mr. GRAMM. Mr. President, I will speak first because I think Senator CONRAD deserves the right to close out on his amendment.

I think this issue has been pretty well debated. I agree with the Democratic floor leader, Senator REID; I think it has been a good debate.

The Conrad amendment does not repeal the death tax. It improves current law by speeding up the process and making a nominal change in it, but it still leaves the structure of the system in place where we have a tax on death.

I believe it is fundamentally wrong, and I am unwilling to get into a debate about at what income level it is wrong. I have never accepted the thesis that what is right for one American is wrong for another American based on their income. Right is right and wrong is wrong where I come from.

I want to repeal the death tax. The Senator from North Dakota does not. That is what it all boils down to.

It has been said over and over, as many ways as you can say it, I still remain amazed that people who consistently vote for new spending never have money when it comes time to let people keep more of what they earn. But rather than reiterate all that, let me sum up and say we are going to have an opportunity, after we vote on Senator CONRAD's amendment, to repeal the death tax. There is only one real repeal, and that is the one I have offered with Senator KYL.

I urge my colleagues to vote against the Conrad amendment and to vote for the Gramm-Kyl amendment.

I believe we will get over 51 votes. As you know, because a point of order will be raised against the amendment, we will have to get 60. I don't know that we will get 60 votes today, but I believe we are taking a step toward repealing the death tax permanently. And I am confident that it will be repealed.

Mr. KOHL. Mr. President, I rise today to support the Conrad estate tax reform amendment and oppose the Gramm-Kyl estate tax repeal amendment. I want to compliment equally both sides in this debate, however. They have brought before the Senate a clear question about the direction of U.S. tax policy—a question that the Senate should address. Should the very richest families in this country be able to pass their entire fortunes onto the next generation tax free? In a time of re-emerging budget deficits, urgent homeland defense needs, and a slowly recovering economy, is a tax break exclusively for the very richest among us a good idea?

That is what this debate is about. Unfortunately, we have heard more about other issues then that very basic question of how we tax the rich and the not so rich in this country.

We have heard that the votes today are about repealing a tax on those who inherit that causes the break-up of family businesses or farms. It is not. The Conrad amendment raises the amount of an estate exempt from tax to $3.5 million, $7 million for a couple, by 2009. In Wisconsin, that will completely exempt all but 0.2 percent of estates from any taxes at all. So we are not arguing over estate taxes on the local dairy farm or the small business operating on Main Street. We all agree they should be totally exempt, and under all proposals we consider today, they are.

No, the question today is should we go further than exempting small businesses, medium-sized businesses, and most all farms—certainly all Wisconsin farms—from the estate tax? Should we enact a tax break for very richest families in this country—less than 1 percent of all estates in this country? Or should we save the hundreds of billions of dollars that that tax break will cost—and use it to defend our country better, pass tax breaks that help the middle class working family, or simply pay down our huge debt? I can think of many uses for billions of dollars better than passing a tax break that will benefit those that inherit $15 million but do nothing for those who inherit $15,000, $150,000, or even $1 milllion.

The choice is clear. It is time to reform the estate tax and exempt 99 percent of all families from any worry of taxes after death. It is not time—and I am not sure it ever will be—to give a multi-billion dollar break to a very small number of very rich families.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, we should reform, not repeal, the estate tax because repeal is unaffordable, it is unfair, and it is unpopular.

First, on the question of affordability: The cost of eliminating the estate tax absolutely explodes in the second decade. It costs $100 billion in this 10-year period. It costs $740 billion in the second decade, right at the time the baby boomers retire, and when we know we already are in deep deficit and adding to the debt.

Just yesterday we added to the national debt by $450 billion. Our friends on the other side of the aisle would dig that hole much deeper.

My proposal is far more affordable. Instead of $99.4 billion in the next 10 years, $12.6 billion.

The elimination of the tax is unfair.

One example: Mr. Skilling, the former head of Enron, would get a $55 million tax cut, paid for by the Social Security taxes of 30,000 Americans earning $30,000 a year. That is not fair.

On the question of popularity, overwhelmingly, the American people say: Reform, not repeal. By 58 percent to 37 percent, they favor reform over repeal.

That is what my amendment does. It takes the exemption to $3 million for an individual and $6 million for a couple next year. In 2009, it goes to $3.5 million for an individual and $7 million for a couple. They would pay nothing.

That is fair. It is affordable. And it is what the American people want.

I urge my colleagues to support the Conrad amendment.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. All time is yielded back.

The Senator from Texas.

Mr. GRAMM. Mr. President, under the unanimous consent agreement, I raise a 311 budget point of order against the Conrad amendment.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Idaho (Mr. CRAPO) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''no.''

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

The yeas and nays resulted—yeas 38, nays 60, as follows:

[Rollcall Vote No. 150 Leg.]

YEAS—38

Akaka	Dorgan	Levin
Bayh	Durbin	Lieberman
Biden	Edwards	Mikulski
Bingaman	Feinstein	Nelson (FL)
Boxer	Graham	Reed
Breaux	Harkin	Reid
Byrd	Inouye	Rockefeller
Clinton	Jeffords	Sarbanes
Conrad	Johnson	Schumer
Corzine	Kennedy	Stabenow
Daschle	Kerry	Torricelli
Dayton	Kohl	Wellstone
Dodd	Leahy	

NAYS—60

Allard	Enzi	Miller
Allen	Feingold	Murkowski
Baucus	Fitzgerald	Murray
Bennett	Frist	Nelson (NE)
Bond	Gramm	Nickles
Brownback	Grassley	Roberts
Bunning	Gregg	Santorum
Burns	Hagel	Sessions
Campbell	Hatch	Shelby
Cantwell	Hollings	Smith (NH)
Carnahan	Hutchinson	Smith (OR)
Carper	Hutchison	Snowe
Chafee	Inhofe	Specter
Cleland	Kyl	Stevens
Cochran	Landrieu	Thomas
Collins	Lincoln	Thompson
Craig	Lott	Thurmond
DeWine	Lugar	Voinovich
Domenici	McCain	Warner
Ensign	McConnell	Wyden

NOT VOTING—2

Crapo	Helms

The PRESIDING OFFICER. On this vote, the yeas are 38, the nays are 60. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained, and the amendment falls.

The majority leader.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the previous agreement for 5 minutes to explain the amendment be vitiated.

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

Mr. DASCHLE. Mr. President, I ask unanimous consent that Senator CONRAD be recognized to make a point of order.

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

Mr. CONRAD. Mr. President, I raise a point of order that the pending amendment violates section 311(a)(2)(B) of the Congressional Budget Act of 1974.

Mr. GRAMM. I move to waive the point of order, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The majority leader.

Mr. DASCHLE. Mr. President, I announce to my colleagues this is the last vote of the day.

The PRESIDING OFFICER. The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Idaho (Mr. CRAPO) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''yea.''

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

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 151 Leg.]

YEAS—54

Allard	Fitzgerald	Nelson (FL)
Allen	Frist	Nelson (NE)
Baucus	Gramm	Nickles
Bayh	Grassley	Roberts
Bennett	Gregg	Santorum
Bond	Hagel	Sessions
Brownback	Hatch	Shelby
Bunning	Hutchinson	Smith (NH)
Burns	Hutchison	Smith (OR)
Campbell	Inhofe	Snowe
Cleland	Kyl	Specter
Cochran	Landrieu	Stevens
Collins	Lincoln	Thomas
Craig	Lott	Thompson
DeWine	Lugar	Thurmond
Domenici	McConnell	Voinovich
Ensign	Miller	Warner
Enzi	Murkowski	Wyden

NAYS—44

Akaka	Dodd	Leahy
Biden	Dorgan	Levin
Bingaman	Durbin	Lieberman
Boxer	Edwards	McCain
Breaux	Feingold	Mikulski
Byrd	Feinstein	Murray
Cantwell	Graham	Reed
Carnahan	Harkin	Reid
Carper	Hollings	Rockefeller
Chafee	Inouye	Sarbanes
Clinton	Jeffords	Schumer
Conrad	Johnson	Stabenow
Corzine	Kennedy	Torricelli
Daschle	Kerry	Wellstone
Dayton	Kohl	

NOT VOTING—2

Crapo	Helms

The PRESIDING OFFICER. On this question, the yeas are 54, the nays are 44. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the motion is rejected. The point of order is sustained. The amendment falls.

MEASURE RETURNED TO THE CALENDAR—H.R. 8

The PRESIDING OFFICER. Under the previous order, H.R. 8 is returned to the calendar.

Mr. WELLSTONE. Mr. President, today I opposed full repeal of the estate tax, but I supported a commonsense compromise to cap the estate tax exemption at a reasonable level for all families, and eliminate the tax completely for family farmers and small business owners.

Full repeal of the estate tax is hugely expensive, it will cost nearly a trillion dollars over the next 20 years, it is grossly unfair because it benefits only the tiny number of Americans who pay the estate tax under current law. In fact, in 1999 only 636 Minnesotans paid any estate tax what so ever. Only 36 of those estates were valued at $5 million or more. This is simply not a burden that falls on many families.

In contrast, many rely on Social Security. Over 740,000 Minnesotans currently receive Social Security. The vast majority of these are retired seniors, others are severely disabled. For many it is their only source of income. I find it outrageous that colleagues are proposing to use the Social Security surplus, which nearly a million Minnesotans rely upon, to give a massive tax break to the heirs of a handful of Americans.

Nationally, only 1.6 percent of all estates were made up with significant small business assets, and only 1.4 percent had significant farm assets. This means that virtually all the estate tax is paid by extremely wealthy people who do not own farms or small businesses. It also means that we could eliminate the estate tax for small businesses and farms and not engage in a massive raid on the Treasury.

Proponents of last year's massive tax cut portrayed the legislation as completely protecting small businesses and family farms from the estate tax. But as a cost saving gimmick, the law only does so for only one year.

Business owners were used as pawns last year, and they are again this year. Now they are frustrated trying to plan for their families' futures around this scheme and they shouldn't have to be.

I supported a commonsense compromise that would have capped the estate exemption at a reasonable level, $8 million for a married couple, lifting the burden of the estate tax from 98 percent of estates, but maintaining the tax for large, wealthy estates.

In addition, the Dorgan amendment would have totally exempted family-owned small business and farm assets from the estate tax if the family of the current owner wishes to continue to operate the business or farm. Because this relief would have been permanent, business owners can plan their affairs with confidence and security. And this complete repeal for businesses and farms would be effective next year, unlike the republican proposal where family business owners would have to wait until 2010.

In an ideal world I would have written the Dorgan amendment differently. I would strengthen the family-owned business provision to ensure than only smaller business and farms, with 200 employees or less would qualify for this exemption. But I voted for the Dorgan

amendment because it is still far better than full repeal. It retains the estate tax for the ultra-rich, but would protect small business owners and family farmers. And it would save hundreds of billions over the next 20 years compared to full repeal.

Let me also point out one final irony in this debate. I mentioned yesterday the bizarreness of colleagues voting against raising the debt limit, and then in the same day turning around and supporting a bill that would raise the national debt by hundreds of thousands more.

Today's irony is that this is supposed to be a debate about small businesses, but my friends on the other side are opposing the Dorgan amendment that gives permanent relief from the estate tax from small businesses and family farmers right now—compared to 7 years from now under the Gramm approach. Let me repeat that, my colleagues on the other side say they are for the small business owner. They say they are for the family farmer. Yet they are opposing immediate relief for small business owners and farmers. Why? To protect their tax breaks for billionaires.

Small businesses and farmers are the pawns in this debate. They have literally been used by those who want to give billionaires a tax break. I don't know if there is a single person in this body who would oppose giving permanent, targeted estate tax relief to small business owners and family farmers. I think it could pass 100 to 0. But it didn't because if the supporters of full repeal let the small business owner get relief then they lose this issue. And they won't get repeal for billionaires. And they would rather have the issue to campaign on, and they aren't going to let the little guy on Main Street get his tax break unless they can get it for the fat cat on Wall Street.

The Dorgan amendment should be an eye opener for small business owners and farmers. It betrays the real agenda behind full repeal of the estate tax. It's not about the little guy. It is not about the shopkeeper, the farmer, the contractor, the wholesaler. They are the hostages in this debate.

I will not jeopardize Social Security—which tens of millions of Americans rely upon for their retirement—to grant tax breaks to the heirs of multimillionaires and billionaires.

We cannot afford to give a few lucky Americans a tax free inheritance of hundreds of millions or billions of dollars and protect the tens of millions of Americans and over 740,000 Minnesotans who rely on Social Security.

But we can afford to shield small estates, small businesses, and family farms from the estate tax at the same time we safeguard the retirement security of all Minnesotans. That is what I voted to do.

UNANIMOUS CONSENT REQUEST

Mr. REID. Mr. President, I ask unanimous consent that on Friday, June 14, the Senate proceed concurrently, at a time to be determined by the majority leader after consultation with the Republican leader, to two bills relating to cloning, a bill to be introduced by Senators HATCH, FEINSTEIN, SPECTER, and others, and a bill to be introduced by Senator BROWNBACK. I further ask that Senator BROWNBACK or his designee be recognized to immediately offer a cloture motion on his bill, to be followed by Senator HATCH or his designee offering a cloture motion on his bill. I further ask unanimous consent that no amendments or motions to commit be in order to either bill and there be the following limitations for debate with respect to both bills: 3 hours equally divided between the two sponsors or their designees on Friday; 4 hours equally divided in the same fashion on Monday, June 17; 1 hour equally divided in the same fashion on Tuesday, June 18; that following the use or yielding back of time, on Tuesday, the Senate proceed to vote on the cloture motion on Senator BROWNBACK's bill and, notwithstanding the outcome of that vote, to be followed by an immediate cloture vote on Senator HATCH's bill; further, if cloture is invoked on either bill, the Senate then resume consideration under the provisions of rule XXII. Finally, I ask unanimous consent that, if cloture is not invoked on either bill, then each bill be placed back on the calendar.

The PRESIDING OFFICER. Is there objection? The Senator from Kansas.

Mr. BROWNBACK. Mr. President, reserving the right to object, I appreciate my colleague from Nevada bringing this forward. I hope we can work out a reasonable and prudent way to address what I consider to be a critical issue—many people consider to be a critical issue in front of the country. I say we still may be able to get to an agreement that would get ample time and opportunity for the Senate to speak on this timely legislation.

I therefore ask unanimous consent for the following modifications to this pending request. I ask unanimous consent that on Friday, June 14, the Senate proceed to the bill just mentioned, introduced by Senator KENNEDY, Senator HATCH, and others, and that Senator LANDRIEU, myself, and Senator HUTCHISON be permitted to offer up to four relevant amendments to the bill; further, I ask unanimous consent that these amendments be in order notwithstanding the provisions of rule XXII, and that no other amendments be in order to the bill.

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. REID. I do not.

The PRESIDING OFFICER. Is there objection?

Mr. BROWNBACK. Then I am afraid I must object and I do object.

The PRESIDING OFFICER. Objection is heard. The Senator from Nevada.

Mr. REID. Mr. President, I am, of course, disappointed. Many people worked long and hard to come up with this agreement. Senator DASCHLE, I believe, has fulfilled his commitment. As I understand it, the only dispute is to when the respective votes should occur, and I submit that shouldn't matter that much, but that is the unanimous consent agreement that was propounded. Senator DASCHLE has worked with others long and hard. Maybe later we can work something else out. At the present time, I think Senator DASCHLE has fulfilled his commitment.

UNANIMOUS CONSENT AGREEMENT—S. 2600

Mr. REID. I ask unanimous consent that at 10 a.m. tomorrow the Senate proceed to the consideration of Calendar No. 410, S. 2600, the terrorism insurance bill.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Reserving the right to object, I ultimately will not object, but I want to propose that the unanimous consent request be amended to read as follows: I ask unanimous consent that at a time determined by the majority leader, after consultation with the Republican leader, the Senate proceed to the consideration of Calendar No. 252, H.R. 3210, and it be considered under the following limitations, the only amendments in order be the following: A substitute amendment by Senator GRAMM and myself, the text of which will be printed in the RECORD upon the granting of the consent; three relevant first-degree amendments to the substitute to be offered by each leader or their designees, and that no motions to recommit be in order; I further ask unanimous consent that, following a vote on or in relation to the above-listed first-degree amendments and any debate time, there be a vote on or in relation to the substitute amendment; finally, I ask unanimous consent that when and if the bill is passed, the Senate then insist on its amendment and request a conference with the House on the disagreeing votes.

Mr. REID. Mr. President, it is my understanding——

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. REID. Mr. President, reserving the right to respond to the Chair, I would simply say this: We have been through this now for months. I have been down here on a number of occasions, trying to get something that we believe will expedite this very important legislation. We have tried one amendment on each side, two amendments on each side, three amendments on each side. I think we finally got to five amendments on each side. I think the best thing to do is just get to the bill. It is an important piece of legislation and if it is as important as the major industries believe it is, we are

going to complete this bill in a reasonable period of time. So I do not consent to the modification.

The PRESIDING OFFICER. Objection is heard. Is there objection to the request from the Senator from Nevada?

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

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. I am not going to object. I just want to say we are bringing up a bill that was not reported by the committee of jurisdiction. There has been an effort underway by many of us to try to reach a bipartisan consensus, and it may very well be that this is the only route we can take. I happen to be one of the people around here who believes that we should have passed the bill last year. I was for a bill.

I would like to say today that this is a hard way to do it, and it is going to mean we are going to have to do a lot of amendments on the floor that we should have done in committee. I hope, therefore, that we are not going to find ourselves in a position where we are going to have an effort to cloture the bill.

If the bill had come out of committee, if there were some kind of consensus, then I think you could understand that, if people were raising extraneous amendments. But I am hoping we are going to have time for debate. I think there will be a real possibility that we will have to have maybe 10 or 12 or 15 real amendments on the subject, amendments on which we will have to work our will. I hope we will not have that process cut off with cloture.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Further reserving the right to object, let me add to what the Senator from Texas has said. Ultimately I will not object, either. But both of us believe that we have put together a proposal that should have been the base bill. I think I can speak for the Senator from Texas and myself: We have some direction from the administration now as to what kind of legislation they might ultimately sign. I have in my hand a letter addressed to the Republican leader, signed by the Secretary of the Treasury, the Director of the Office of Management and Budget, the Director of the National Economic Council, and the Council of Economic Advisers indicating that a bill that makes the victims of terrorist attacks a subject of punitive damages and that opens up this whole area for further predatory lawsuits will not be signed by the President. They will recommend to the President a veto.

I share the view of the Senator from Texas that the amendments to this bill certainly ought to be germane to the subject. The amendments that this Senator is going to offer will certainly be germane to the subject. Just so everybody will know what the Senator from Texas and I had put together, what we thought would be the best way to go as the best bill that will be available to everyone, I ask unanimous consent to have two things printed in the RECORD: First, the letter signed by the Secretary of the Treasury, dated June 10.

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

DEPARTMENT OF THE TREASURY,
Washington, DC, June 10, 2002.

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

DEAR SENATOR LOTT: The War on Terrorism must be fought on many fronts. From an economic perspective, we must minimize the risks and consequences associated with potential acts of terror. No measure is more important to mitigating the economic effects of terrorist events than the passage of terrorism insurance legislation.

Last November 1, the Administration publicly agreed to bipartisan legislation negotiated with Chairman Sarbanes, Chairman Dodd, Senator Gramm and Senator Enzi. While the House of Representatives quickly responded to this urgent need by passing appropriate legislation, the Senate did not act and has not passed any form of terrorism legislation in the intervening seven months.

The absence of federal legislation is having a palpable and severe effect on our economy and is costing America's workers their jobs. In the first quarter of this year, commercial real estate construction was down 20 percent. The disruption of terrorism coverage makes it more difficult to operate, acquire, or refinance property, leading to diminished bank lending for new construction projects and lower asset values for existing properties. The Bond Market Association has said that more than $7 billion worth of commercial real estate activity has been suspended or cancelled due to the lack of such insurance. Last week, Moody's Investors Service announced that 14 commercial mortgage-backed transactions could be downgraded due to a lack of such insurance.

Without such insurance, the economic impact of another terrorist attack would be much larger, including major bankruptcies, layoffs and loan defaults. While we are doing everything we can to stop another attack, we should minimize the widespread economic damage to our economy should such an event occur.

One important issue for the availability of terrorism insurance is the risk of unfair or excessive litigation against American companies following an attack. Many for-profit and charitable entities have been unable to obtain affordable and adequate insurance, in part because of the risk that they will be unfairly sued for the acts of international terrorists.

To address this risk at least two important provisions are essential. First, provisions for an exclusive federal cause of action and consolidation of all cases arising out of terrorist attacks, like those included in the Air Transportation Safety and System Stabilization Act, are necessary to provide for reasonable and expeditious litigation.

Second, the victims of terrorism should not have to pay punitive damages. Punitive damages are designed to punish criminal or near-criminal wrongdoing. Of course such sanctions are appropriate for terrorists. But American companies that are attacked by terrorists should not be subject to predatory lawsuits. The availability of punitive damages in terrorism cases would result in inequitable relief for injured parties, threaten bankruptcies for American companies and a loss of jobs for American workers.

It is also clear that the potential for massive damages imposed on companies that suffer from acts of terror would endanger our economic recovery from a terrorist attack. Indeed, the added risks and legal uncertainty hanging over the economy as a result of last September 11th are major factors inhibiting a business willingness to invest and to create jobs. It makes little economic sense to pass a terrorism insurance bill that leaves our economy exposed to such inappropriate and needless legal uncertainty.

The bipartisan public agreement reached between the Administration and Chairman Sarbanes, Chairman Dodd, Senator Gramm and Senator Enzi last fall provided these minimum safeguards. We would recommend that the President not sign any legislation that leaves the American economy and victims of terrorist acts subject to predatory lawsuits and punitive damages.

The American people and our economy have waited seven months since our public agreement on legislation. The process must move forward. Prompt action by the Senate on this vitally important legislation is needed now.

Sincerely,

PAUL H. O'NEILL,
Secretary of the Treasury.
MITCHELL E. DANIELS,
Director, Office of Management and Budget.
LAWRENCE LINDSEY,
Director, National Economic Council.
R. GLENN HUBBARD,
Director, Council of Economic Advisors.

Mr. MCCONNELL. We would like also to include the bill that Senator GRAMM and I had hoped would be the base bill that we took up, one that we are confident the President would have embraced and signed. I ask unanimous consent that be printed in the RECORD.

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

S. —

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 ''Terrorism Risk Insurance Act of 2002''.

SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) property and casualty insurance firms are important financial institutions, the products of which allow mutualization of risk and the efficient use of financial resources and enhance the ability of the economy to maintain stability, while responding to a variety of economic, political, environmental, and other risks with a minimum of disruption;

(2) the ability of businesses and individuals to obtain property and casualty insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade in an increasingly interconnected world;

(3) the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;

(4) widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of information from which financial institutions can make statistically valid estimates of the probability and costs of future terrorist events, and therefore the size, finding, and allocation of the risk of loss caused by such acts of terrorism;

(5) a decision by property and casualty insurers to deal with such uncertainties, either by terminating property and casualty coverage for losses arising form terrorist events, or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity and

(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

(b) PURPOSE.—The purpose of this Act is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to—

(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and

(2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ACT OF TERRORISM.—

(A) CERTIFICATION.—The term ''act of terrorism'' means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States—

(i) to be a violent act or an act that is dangerous to—

(I) human life;

(II) property; or

(III) infrastructure;

(ii) to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel described in paragraph (3)(A)(ii); and

(iii) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(B) LIMITATION.—No act or event shall be certified by the Secretary as an act of terrorism if—

(i) the act or event is committed in the course of a war declared by the Congress; or

(ii) losses resulting from the act or event, in the aggregate, do not exceed $5,000,000.

(C) DETERMINATION FINAL.—Any certification of, or determination not to certify, an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

(2) BUSINESS INTERRUPTION COVERAGE.—The term ''business interruption coverage''—

(A) means coverage of losses for temporary relocation expenses and ongoing expenses, including ordinary wages, where—

(i) there is physical damage to the business premises of such magnitude that the business cannot open for business;

(ii) there is physical damage to other property that totally prevents customers or employees from gaining access to the business premises; or

(iii) the Federal, State, or local government shuts down an area due to physical or environmental damage, thereby preventing customers or employees from gaining access to the business premises; and

(B) does not include lost profits, other than in the case of a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632) and applicable regulations thereunder) in any case described in clause (i), (ii), or (iii) of subparagraph (A).

(3) INSURED LOSS.—The term ''insured loss''—

(A) means any loss resulting from an act of terrorism that is covered by primary property and casualty insurance, including business interruption coverage, issued by a participating insurance company, if such loss—

(i) occurs within the United States; or

(ii) occurs to an air carrier (as defined in section 40102 of title 49, United States Code) or to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs; and

(B) excludes coverage under any life or health insurance.

(4) NAIC.—The term ''NAIC'' means the National Association of Insurance Commissioners.

(5) PARTICIPATING INSURANCE COMPANY.—The term ''participating insurance company'' means any insurance company, including any subsidiary or affiliate thereof—

(A) that—

(i) is licensed or admitted to engage in the business of providing primary insurance in any State, and was so licensed or admitted on September 11, 2001; or

(ii) is not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

(B) that receives direct premiums for any type of commercial property and casualty insurance coverage or that, not later than 21 days after the date of enactment of this Act, submits written notification to the Secretary of its intent to participate in the Program with regard to personal lines of property and casualty insurance; and

(C) that meets any other criteria that the Secretary may reasonably prescribe.

(6) PERSON.—The term ''person'' means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

(7) PROGRAM.—The term ''Program'' means the Terrorism Insured Loss Shared Compensation Program established by this Act.

(8) PROPERTY AND CASUALTY INSURANCE.—The term ''property and casualty insurance''—

(A) means commercial lines of property and casualty insurance;

(B) includes personal lines of property and casualty insurance, if a notification is made in accordance with paragraph (5)(B); and

(C) does not include—

(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.); or

(ii) private mortgage insurance, as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901).

(9) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(10) STATE.—The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and each of the United States Virgin Islands.

(11) UNITED STATES.—The term ''United States'' means all States of the United States and includes the territorial seas of the United States.

SEC. 4. TERRORISM INSURED LOSS SHARED COMPENSATION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—There is established in the Department of the Treasury the Terrorism Insured Loss Shared Compensation Program.

(2) AUTHORITY OF THE SECRETARY.—Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured losses in accordance with subsection (e).

(b) CONDITIONS FOR FEDERAL PAYMENTS.—No payment may be made by the Secretary under subsection (e), unless—

(1) a person that suffers an insured loss, or a person acting on behalf of that person, files a claim with a participating insurance company;

(2) the participating insurance company provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program—

(A) in the case of any policy covering an insured loss that is issued on or after the date of enactment of this Act, in the policy, at the time of offer, purchase, and renewal of the policy; and

(B) in the case of any policy that is issued before the date of enactment of this Act, not later than 90 days after that date of enactment;

(3) the participating insurance company processes the claim for the insured loss in accordance with its standard business practices, and any reasonable procedures that the Secretary may prescribe; and

(4) the participating insurance company submits tot he Secretary, in accordance with such reasonable procedures as the Secretary may establish—

(A) a claim for payment of the Federal share of compensation for insured losses under the Program;

(B) written verification and certification—

(i) of the underlying claim; and

(ii) of all payments made for insured losses; and

(C) certification of its compliance with the provisions of this subsection.

(c) MANDATORY PARTICIPATION; MANDATORY AVAILABILITY.—Each insurance company that meets the definition of a participating insurance company under section 3—

(1) shall participate in the Program;

(2) shall make available in all of its property and casualty insurance policies (in all of its participating lines), coverage for insured losses; and

(3) shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(d) PARTICIPATION BY SELF INSURED ENTITIES.—

(1) DETERMINATION BY THE SECRETARY.—The Secretary may, in consultation with the NAIC, establish procedures to allow participation in the Program by municipalities and other governmental or quasi-governmental entities (and by any other entity, as the Secretary deems appropriate) operating through

self insurance arrangements that were in existence on September 11, 2001, but only if the Secretary makes a determination with regard to participation by any such entity before the occurrence of an act of terrorism in which the entity incurs an insured loss.

(2) PARTICIPATION.—If the Secretary makes a determination to allow an entity described in paragraph (1) to participate in the Program, all reports, conditions, requirements, and standards established by this Act for participating insurance companies shall apply to any such entity, as determined to be appropriate by the Secretary.

(e) SHARED INSURANCE LOSS COVERAGE.—

(1) FEDERAL SHARE.—

(A) IN GENERAL.—Subject to the cap on liability under paragraph (2) and the limitation under paragraph (6), the Federal share of compensation under the Program to be paid by the Secretary for insured losses resulting from an act of terrorism occurring during the period beginning on the date of the enactment of this Act and ending at midnight on December 31, 2003 shall be equal to 90 percent of that portion of the amount of aggregate insured losses that exceeds $10,000,000,000.

(B) EXTENSION PERIOD.—If the Program is extended in accordance with section 6, the Federal share of compensation under the Program to be paid by the Secretary for insured losses resulting from an act of terrorism occurring during the period beginning on January 1, 2004 and ending at midnight on December 31, 2004, shall be equal to 90 percent of that portion of the amount of aggregate insured losses that exceeds $20,000,000,000, subject to the cap on liability in paragraph (2) and the limitation under paragraph (6).

(C) PRO RATA SHARE.—If, during the period described in subparagraph (A) (or during the period described in subparagraph (B), if the Program is extended in accordance with section 6), the aggregate insured losses for that period exceed $10,000,000,000, the Secretary shall determine the pro rata share for each participating insurance company of the Federal share of compensation for insured losses calculated under subparagraph (A).

(2) CAP ON ANNUAL LIABILITY.—Notwithstanding paragraph (1), or any other provision of Federal or State law, if the aggregate insured losses exceed $100,000,000,000 during any period referred to in subparagraph (A) and (B) of paragraph (1)—

(A) the Secretary shall not make any payment under this Act for any portion of the amount of such losses that exceeds $100,000,000,000; and

(B) participating insurance companies shall not be liable for the payment of any portion of the amount that exceeds $100,000,000,000.

(3) NOTICE TO CONGRESS.—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 in any period described in paragraph (1), and the Congress shall determine the procedures for and the source of any such excess payments.

(4) FINAL NETTING.—The Secretary shall have sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall become final.

(5) DETERMINATION FINAL.—Any determination of the Secretary under this subsection shall be final, and shall not be subject to judicial review.

(6) IN-FORCE REINSURANCE AGREEMENTS.—For policies covered by reinsurance contracts in force on the date of enactment of this Act, until the in-force reinsurance contract is renewed, amended, or has reached its 1-year anniversary date, any Federal share of compensation due to a participating insurance company for insured losses during the effective period of the Program shall be shared—

(A) with all reinsurance companies to which the participating insurance company has ceded some share of the insured loss pursuant to an in-force reinsurance contract; and

(B) in a manner that distributes the Federal share of compensation for insured losses between the participating insurance company and the reinsurance company or companies in the same proportion as the insured losses would have been distributed if the Program did not exist.

SEC. 5. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

(a) GENERAL AUTHORITY.—The Secretary shall have the powers and authorities necessary to carry out the Program, including authority—

(1) to investigate and audit all claims under the Program; and

(2) to prescribe regulations and procedures to implement the Program.

(b) INTERIM RULES AND PROCEDURES.—The Secretary shall issue interim final rules or procedures specifying the manner in which—

(1) participating insurance companies may file, verify, and certify claims under the Program;

(2) the Secretary shall publish or otherwise publicly announce the applicable percentage of insured losses that is the responsibility of participating insurance companies and the percentage that is the responsibility of the Federal Government under the Program;

(3) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual aggregate insured losses;

(4) the Secretary may, at any time, seek repayment from or reimburse any participating insurance company, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions contained in section 4;

(5) each participating insurance company that incurs insured losses shall pay its pro rata share of insured losses, in accordance with section 4; and

(6) the Secretary will determine any final netting of payments for actual insured losses under the Program, including payments owed to the Federal Government from any participating insurance company and any Federal share of compensation for insured losses owed to any participating insurance company, to effectuate the insured loss sharing provisions contained in section 4.

(c) SUBROGATION RIGHTS.—The United States shall have the right of subrogation with respect to any payment made by the United States under the Program.

(d) CONTRACTS FOR SERVICES.—The Secretary may employ persons or contract for services as may be necessary to implement the Program.

(e) CIVIL PENALTIES.—The Secretary may assess civil money penalties for violations of this Act or any rule, regulation, or order issued by the Secretary under this Act relating to the submission of false or misleading information for purposes of the Program, or any failure to repay any amount required to be reimbursed under regulations or procedures described in section 5(b). The authority granted under this subsection shall continue during any period in which the Secretary's authority under section 6(d) is in effect.

SEC. 6. TERMINATION OF PROGRAM; DISCRETIONARY EXTENSION.

(a) TERMINATION OF PROGRAM.—

(1) IN GENERAL.—The Program shall terminate at midnight on December 31, 2003, unless the Secretary—

(A) determines, after considering the report and finding required by this section, that the program should be extended for one additional year, until midnight on December 31, 2004; and

(B) promptly notifies the Congress of such determination and the reasons therefor.

(2) DETERMINATION FINAL.—The determination of the Secretary under paragraph (2) shall be final, and shall not be subject to judicial review.

(3) TERMINATION AFTER EXTENSION.—If the program is extended under paragraph (1), the Program shall terminate at midnight on December 31, 2004.

(b) REPORT TO CONGRESS.—Not later than 9 months after the date of enactment of this Act the Secretary shall submit a report to Congress—

(1) regarding—

(A) the availability of insurance coverage for acts of terrorism;

(B) the affordability of such coverage, including the effect of such coverage on premiums; and

(C) the capacity of the insurance industry to absorb future losses resulting from acts of terrorism, taking into account the profitability of the insurance industry; and

(2) that considers—

(A) the impact of the program on each of the factors described in paragraph (1); and

(B) the probable impact on such factors and on the United States economy if the Program terminates at midnight on December 31, 2003.

(c) FINDING REQUIRED.—A determination under subsection (a) to extend the program shall be based on a finding by the Secretary that—

(1) widespread market uncertainties continue to disrupt the ability of insurance companies to price insurance coverage for losses resulting from acts of terrorism, thereby resulting in the continuing unavailability of affordable insurance for consumers; and

(2) extending the program for an additional year would likely encourage economic stabilization and facilitate a transition to a viable market for private terrorism risk insurance.

(d) CONTINUING AUTHORITY TO PAY OR ADJUST COMPENSATION.—following the termination of the Program under subsection (a), the Secretary may take such actions as may be necessary to ensure payment, reimbursement, or adjustment of compensation for insured losses arising out of any act of terrorism occurring during the period in which the Program was in effect under this Act, in accordance with the provisions of section 4 and regulations promulgated thereunder.

(e) REPEAL; SAVINGS CLAUSE.—This act is repealed at midnight on the final termination date of the Program under section (a), except that such repeal shall not be construed—

(1) to prevent the Secretary from taking, or causing to be taken, such actions under subsection (d) of this section and sections 4(e)(4), 4(e)(5), 5(a)(1), 5(c), and (e) (as in effect on the day before the date of such repeal), and applicable regulations promulgated thereunder, during any period in which the authority of the Secretary under subsection (d) of this section is in effect; or

(2) to prevent the availability of funding under section 9(b) during any period in which authority of the Secretary under subsection (d) of this section is in effect.

(f) SENSE OF THE CONGRESS.—It is the sense of the Congress that he Secretary should make any determination under subsection (a) in sufficient time to enable participating insurance companies to include coverage for acts of terrorism in their policies for 2004.

(g) STUDY AND REPORT ON SCOPE OF THE PROGRAM.—

(1) STUDY.—The Secretary, after consultation with the NAIC, representatives of the

insurance industry, and other experts in the insurance field, shall conduct a study of the potential effects of acts of terrorism on the availability of life insurance and other lines of insurance coverage.

(2) REPORT.—Not later than 9 months after the date of enactment of this Act, the Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1).

(h) REPORTS REGARDING TERRORISM RISK INSURANCE PREMIUMS.—

(1) REPORT TO THE NAIC.—Beginning 6 months after the date of enactment of this Act, and every 6 months thereafter, each participating insurance company shall submit a report to the NAIC that states the premium rates charged by that participating insurance company during the preceding 6-month period for insured losses covered by the Program, and includes an explanation of and justification for those rates.

(2) REPORTS FORWARDED.—The NAIC shall promptly forward copies of each report submitted under paragraph (1) to the Secretary, the Secretary of commerce, the Chairman of the Federal trade Commission, and the Comptroller General of the United States.

(3) AGENCY REPORT TO CONGRESS.—

(A) IN GENERAL.—The Secretary, the Secretary of Commerce and the Chairman of the Federal Trade Commission shall submit joint reports to Congress and the Comptroller General of the United States summarizing and evaluating the reports forward under paragraph (2).

(B) TIMING.—The reports required under subparagraph (A) shall be submitted—

(i) 9 months after the date of enactment of this Act; and

(ii) 12 months after the date of submission of the first report under clause (i).

(4) GAO EVALUATION AND REPORT.—

(A) EVALUATION.—The Comptroller General of the United States shall evaluate each report submitted under paragraph (3), and upon request, the Secretary, the Secretary of Commerce, the Chairman of the Federal Trade Commission, and the NAIC shall provide to the Comptroller all documents, records, and any other information that the Comptroller deems necessary to carry out such evaluation.

(B) REPORT TO CONGRESS.—Not later than 90 days after receipt of each report submitted under paragraph (3), the Comptroller General of the United States shall submit to Congress a report of the evaluation required by subparagraph (A).

SEC. 7. PRESERVATION OF STATE LAW.

Nothing in this Act shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any participating insurance company or other person—

(1) except as specifically provided in this Act; and

(2) except that—

(A) the definition of the term ''act of terrorism'' in section 3 shall be the exclusive definition of that term for purposes of compensation for insured losses under this Act, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this Act;

(B) during the period beginning on the date of enactment of this Act and ending at midnight on December 31, 2002, rates for terrorism risk insurance covered by this Act and filed with any State shall not be subject to prior approval or a waiting period, under any law of a State that would otherwise be applicable, except that nothing in this Act affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory; and

(C) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 6 (including any period during which the authority of the Secretary under section 6(d) is in effect), books and records of any participating insurance company that are relevant to the Program shall be provided, or caused to be provided, to the Secretary or the designee of the Secretary, upon request by the Secretary or such designee, notwithstanding any provision of the laws of any State prohibiting or limiting such access.

SEC. 8. SENSE OF THE CONGRESS REGARDING CAPACITY BUILDING.

It is the sense of the Congress that the insurance industry should build capacity and aggregate risk to provide affordable property and casualty insurance coverage for terrorism risk.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS; PAYMENT AUTHORITY.

(a) ADMINISTRATIVE EXPENSES.—There are authorized to be appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary for administrative expenses of the Program, to remain available until expended.

(b) PAYMENT AUTHORITY.—This Act constitutes payment authority in advance of appropriation Acts, and represents the obligation of the Federal Government to provide for the Federal share of compensation for insured losses under the Program.

SEC. 10. PROCEDURES FOR CIVIL ACTIONS.

(a) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for claims arising out of or resulting from an act of terrorism, which shall be the exclusive cause of action and remedy for such claims, except as provided in subsection (f).

(2) PREEMPTION OF STATE ACTIONS.—All State causes of action of any kind for claims arising out of or resulting from an act of terrorism that are otherwise available under State law, are hereby preempted, except as provided in subsection (f).

(b) GOVERNING LAW.—The substantive law for decision in an action described in subsection (a)(1) shall be derived from the law, including applicable choice of law principles, of the State in which the act of terrorism giving rise to the action occurred, except to the extent that—

(1) the law, including choice of law principles, of another State is determined to be applicable to the action by the district court hearing the action; or

(2) otherwise applicable State law (including that determined under paragraph (1), is inconsistent with or otherwise preempted by Federal law.

(c) FEDERAL JURISDICTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, not later than 90 days after the date of the occurrence of an act of terrorism, the Judicial Panel on Multidistrict Litigation shall assign a single Federal district court to conduct pretrial and trial proceedings in all pending and future civil actions for claims arising out of or resulting from that act of terrorism.

(2) SELECTION CRITERIA.—The Judicial Panel on Multidistrict Litigation shall select and assign the district court under paragraph (1) based on the convenience of the parties and the just and efficient conduct of the proceedings.

(3) JURISDICTION.—The district court assigned by the Judicial Panel on Multidistrict Litigation shall have original and exclusive jurisdiction over all actions under paragraph (1). For purposes of personal jurisdiction, the district court assigned by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

(4) TRANSFER OF CASES FILED IN OTHER FEDERAL COURTS.—Any civil action for claims arising out of or resulting from an act of terrorism that is filed in a Federal district court other than the Federal district court assigned by the Judicial Panel on Multidistrict Litigation under paragraph (1) shall be transferred to the Federal district court so assigned.

(5) REMOVAL OF CASES FILED IN STATE COURTS.—Any civil action for claims arising out of or resulting from an act of terrorism that is filed in a State court shall be removable to the Federal district court assigned by the Judicial Panel on Multidistrict litigation under paragraph (1).

(d) APPROVAL OF SETTLEMENTS.—Any settlement between the parties of a civil action described in this section for claims arising out of or resulting from an act of terrorism shall be subject to prior approval by the Secretary after consultation by the Secretary with the Attorney General.

(e) LIMITATION ON DAMAGES.—

(1) IN GENERAL.—Punitive or exemplary damages shall not be available for any losses in any action described in subsection (a)(1), including any settlement described in subsection (d), except where—

(A) punitive or exemplary damages are permitted by applicable State law; and

(B) the harm to the plaintiff was caused by a criminal act or course of conduct for which the defendant was convicted under Federal or State criminal law, including a conviction based on a guilty plea or plea of nolo contendere.

(2) PROTECTION OF TAXPAYER FUNDS.—Any amounts awarded in, or granted in settlement of, an action described in subsection (a)(1) that are attributable to punitive or exemplary damages allowable under paragraph (1) of this subsection shall not count as insured losses for purposes of this Act.

(f) CLAIMS AGAINST TERRORISTS.—Nothing in this section shall in any way be construed to limit the ability of any plaintiff to seek any form of recovery from any person, government, or other entity that was a participant in, or aider and abettor of, any act of terrorism.

(g) EFFECTIVE PERIOD.—This section shall apply only to actions described in subsection (a)(1) arising out of or resulting from acts of terrorism that occur during the effective period of the Program, including any applicable extension period.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Reserving the right to object, I will be brief and I will not object. I think we should go ahead and get an agreement to proceed on this bill because there has been a lot of effort over a long period of time to try to work out some substance, some process for considering it, the numbers of amendments that would be offered. Having been through all of that, I think it is time we just go forward. We could not get an agreement to limit amendments anyway. I believe there are going to be a lot of amendments that relate to the subject matter that will be offered and we will have a good debate.

I do want to make two observations. There was a bipartisan bill. There was a bill, I had the impression, that had been worked out with Senator SARBANES, I thought Senator DODD, and

Senator GRAMM at the committee level, although it was not reported out, that would have had some limits on liability, but all of a sudden it disappeared from the committee itself, went to some other venue, and it came up with the substance as it is now. I do not think that is the way business should be done around here, and every time it is done that way, which was the case, in my opinion, on the energy bill and on an agriculture bill, you get into a great big fracas and have a lot of trouble.

But I think the issue is important. I am sure there are very strong feelings for it and some against it.

But I emphasize the point that Senator MCCONNELL made a moment ago. We need this legislation passed because of the confidence it will provide to this sector of the economy. But it will not be signed into law without some limits on liabilities. We cannot and we will not—and the President will not—allow the plaintiff's lawyers of this country to get this kind of access to the Treasury of the United States of America. I think everybody needs to understand that.

We should do this. We are going forward. But in the end we are not going to have a bill without limits on liabilities.

With that, I withdraw my reservation.

Mr. DASCHLE. Mr. President, in the days and weeks following September 11, this Senate passed an unprecedented series of measures to help heal our wounded nation, protect America from future terrorist attacks, and bring to justice those who attacked us.

Those days were among the most difficult any of us has ever experienced in our public lives. They were also some of our proudest days as Senators—because we were united. Because we rose to a challenge that few of us could have imagined until then.

Today—nearly 9 months after the terrorist attacks we have not yet addressed the growing inability of many businesses to purchase adequate, affordable terrorism insurance.

Democrats have made repeated good-faith offers to reach a bipartisan solution to this difficult problem. This Senate could have passed a terrorism insurance bill months ago—and it could already be law. The only reason it is not is because a small group of Senators in the other party are determined to use terrorism re-insurance as cover to push through radical changes in our legal system that they know do not have sufficient support to pass on their own merits. They are holding terrorism insurance, and America's economic security, hostage to try to force through an agenda that has nothing to do with September 11th, or with the threat of future terrorist attacks.

Enough is enough. Last Friday, Senator DODD introduced a good, balanced terrorism insurance bill, S–2600. I am now calling up that bill to see where the votes fall. We need to stop playing politics with this critical issue.

I want to thank Senator DODD for the extraordinary patience and leadership he has demonstrated on this issue over so many months. I also want to thank a number of our other colleagues—especially Senator SARBANES, Senator SCHUMER and Senator REID—for their help in producing this bill, as well as their many efforts to reach a bipartisan agreement on this matter.

President Bush has asked the Senate repeatedly to pass terrorism insurance. So has the commercial real estate industry, the hotel industry, and many other industries employing tens of millions of Americans. Despite their requests, a small group of Republican Senators has refused to let any terrorism insurance bill pass unless it includes their extraneous plan to dramatically overhaul major parts of America's civil justice system.

At a time when we are hearing new warnings almost every day about the possibility, even the ''inevitability'' of more terrorist attacks—when our economy is struggling to shake off a recession, such political gamesmanship is inexcusable.

Before September 11th, terrorist attacks on America seemed unimaginable. Now, as a result of September 11th, such acts are becoming un-insurable.

Consider a few facts:

A recent survey by The Bond Market Association shows that lenders have placed on hold or canceled more than $7 billion in commercial mortgage loans because of ''the difficulty and expense'' of finding terrorism insurance coverage.

According to a recent study by Moody's, ''virtually all terrorism insurance policies have some major gap, including carve-outs for certain types of terrorism and 30 day cancellation clauses.'' These policy gaps pose significant risks to investors.

The lack of terrorism insurance for commercial real estate is also hurting ''commercial mortgage backed securities'' bonds that are backed entirely by mortgages on commercial buildings. Investors in this $270 billion market include pension funds, insurance companies and other institutions.

Moody's and Fitch recently placed 22 commercial mortgage backed securities transactions—backed by more than $9 billion in commercial real estate loans, on a ''watch list'' for possible downgrade. In every one of the 22 transactions on that list, terrorism insurance for the collateral was either inadequate—or due to expire by this Fall.

In addition, major hotel companies employing thousands of Americans have lost—or will soon lose—terrorism coverage. Businesses, museums, hospitals, gaming and sports facility owners, and builders all over the country are in similar straits.

While a few insurers have come together to offer very narrow coverage, their policies they provide generally exclude coverage for nuclear, biological and chemical attacks—the very threats the government warns us are most likely to be used by terrorists.

The growing gap in terrorism coverage threatens the stability of America's economy.

The plain fact is: private insurers, alone, cannot close this gap. The potential loss is simply too great for any one company or industry to absorb. The federal government must be a partner.

We've done it before. During World War II, the Government authorized a program, administered by private insurers, which insured property against ''enemy attack.'' We need a similar effort today. That is what this bill is about.

The Congress is working closely with the President to improve the physical security of our nation. We should be no less vigilant in defending America's economic security from the catastrophic losses associated with terrorism. We must pass a terrorism bill. We cannot afford to let this critical measure be held hostage any longer by a handful of Senators who want to use it to pass extraneous measures. The risks to America's economic security is too great.

The President has made that clear. The market is making it clear. We need to close the terrorism insurance gap now. No more delays. We urge our colleagues to join us.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, if I could just say a few words before my friend from Connecticut who worked so hard on this legislation makes a few remarks, the minority should understand that Senator DASCHLE has no intention of peremptorily moving to invoke cloture. I think there should be a reasonable time for people to offer amendments. I also say that we also have to work constructively on this legislation.

The fact is that we have as a result of what is facing this country lots of bills, not the least of which is the Defense authorization bill. We have to complete that before the July 4th recess. We are going to do that.

There is a lot of work to do. The majority leader has stated publicly that this legislation is important. Senator DODD has spent untold time trying to work out an agreement. If everybody believes it as important as they say it is, then we should be able to get a bill.

I respectfully say to my friend, the Republican leader, that they have a right to offer all kinds of amendments and any amendment they want to dealing with liability, lawyers, and other things. But I hope if they lose, they do not cause us to not have a bill.

This bill is important to the real estate industry, the developers, and the people in the construction business. We have hotels, businesses, shopping centers, and they have all come to all of us. They believe this is important.

We are going to have a debate. One of the principal participants in that debate will be the Presiding Officer, who was an insurance commissioner of the third or fourth largest State in United States. He certainly has had a view that a lot of us haven't had as to what insurance is all about. We look forward to the debate with the Senator from Florida, and the debate generally. I hope it is as constructive as the debate was on the estate tax. It was a good debate over the last 2 days. When we have debates like that, it makes this body look good. I think people look not at the result as much as how we are treating each other. Senators, we should be happy. I am happy with the result we had with the estate tax. But the debate was good. People had a chance to voice their opinions. I hope we do just as well on this important legislation on terrorism insurance.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank the distinguished majority whip, Senator REID, for propounding the unanimous consent request. I thank the distinguished Republican leader for agreeing to allow this to go forward, and my colleague from Texas, and colleague from Kentucky, who have had a longstanding interest in the subject matter, as many Members have, including the Presiding Officer. And other Members have come to me over time with various ideas and proposals to be included as part of the terrorism insurance package.

Let me say my good friend from Mississippi, the Republican leader, raised the issue about where we were. He is right. There was a time not so long ago—about 8 or 9 months ago—when we sat down and innocently thought that three or four Members sitting together could write something and then come to the floor, and people would say, You have done a lot of work, go ahead. As oftentimes happens, it is not unique. We thought we had put something together. We came to the floor and discovered that there were 97 other Members who had some ideas—not all 97 but a good many had other thoughts about which they felt strongly.

I don't regret the effort that my colleague from Texas and I made with Senator SARBANES of Maryland. Senator SCHUMER was involved I think to some degree in all of that, and others as well. We made a good faith effort. We thought it would work. It didn't.

December 20, I think, was the date when there was a unanimous consent request to bring the matter up. There was an objection expressed at that time. From then on, we have tried all sorts of ideas and variations that would get us to a unanimous consent where we would have a limited number of amendments to be brought up to try to focus on this bill. None of that worked.

We are now in a situation where we had a rule XIV on the bill on June 7, and this evening we avoided a cloture motion, for which I am grateful. That would have delayed consideration of this bill.

I am not going to debate the merits or demerits of the bill tonight. I see my colleague from Maryland, the chairman of the committee, is here. He may want to be heard on this as well.

But this is an important bill. It isn't because I think it is. It is important because you hear from almost every major metropolitan area in the country now that is feeling the real pinch of a slowdown as a result of the inability and an unwillingness, for obvious reasons, of banks to lend money to major real estate and construction projects without those projects having insurance on terrorism.

In the absence of getting that, which the industry is unwilling to write because they cannot figure out how to cost all of this—that is understandable as well from the business standpoint—a lot of these projects are not moving. Jobs are being lost, and the economy is feeling the effects of it.

That is a shorthand version of what is going on. It hasn't reached such proportion yet that it would stop any kind of economic growth. But it certainly, by every estimation, is having a negative impact on our economic recovery.

Now we have put together the proposal. I know there will be amendments offered. My hope is they will be relevant amendments so they don't use this vehicle to bring up all sorts of extraneous matters.

We will try to limit the debate to some degree on the bill we are proposing and the one which I suspect will finally be adopted. Even if some amendments are accepted, it will be substantially different from what the other body proposed.

Even if we complete our work here, there is a monumental amount of work to be done to reach agreement with the other body. If we hope to get that completed at some point between now and over the August break—I hope earlier—we are going to have to finish this bill fairly quickly.

I urge Members who have an interest to come over and be heard. If you can limit your time so we can have a good debate—I hope no one intends to filibuster on this bill. That would certainly be unwise, in my view.

We will try to produce a product that will get us to conference and further refinement, and resolve the issues so we can send it to the President of the United States for his signature; and, sort of cut this Gordian knot that sits out there as a real choke point, if you will, in the economic flow of our country. That is what this is at this point.

I thank again my colleagues for not objecting to the unanimous consent request that we go to this bill. That is a good sign. I know there is still a lot of difference. But I take that as an omen that we at least can bring up this matter and try to resolve these differences. I look forward to the debate tomorrow. I believe we will be here at 10 o'clock tomorrow to start debate on bill, and make opening statements, if they need to be made, and then engage in, hopefully, a healthy but brief debate and discussion on this important matter.

I see my colleague from Maryland here who may want to express some thoughts.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I will be very brief. I join my very able colleague from Connecticut in underscoring the importance of this legislation and the problem with which it seeks to deal. It is one that we have been wrestling with for a number of months.

I particularly commend the able Senator from Connecticut for his leadership on this issue. He has been indefatigable in focusing our attention on this matter and repeatedly insisting that we have to come to terms with this issue.

I am pleased that we are now going to be able to actually move tomorrow to the legislation and begin this important debate. I will defer my comments on the substance of this legislation until tomorrow, until that debate begins.

But Senator DODD has played a major role, an instrumental role, throughout and, obviously, has played a large part in bringing us to the point at which we are now, which offers us now the opportunity to finally address this issue.

I understand, under the consent agreement, it is a wide open consideration that lies ahead of us. I would urge my colleagues of the necessity to show some restraint as we try to do that because we are under, obviously, some very significant time pressures.

But I look forward to that debate and the opportunity to try to address this issue on its substance. We have heard, of course, a great deal from across the country about this matter.

I simply want to echo the able Senator from Connecticut in saying that I hope we can consider this matter in a very positive and constructive way. I know Members have different ideas on how we ought to go about it. We hope to be able to consider those in a reasonable and proper way and reach some conclusion, hopefully, in the near future.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

MARTIN AND GRACIA BURNHAM

Mr. BROWNBACK. Mr. President, I rise today to discuss a sad and incredibly important situation that happened last week involving citizens from my State.

The war on terrorism claimed another victim.

This past week brought about the sorrowful conclusion to a long and harrowing ordeal for three inspiring people, two of whom are from my home

state of Kansas. Gracia and Martin Burnham, and their fellow hostage, Filipino nurse Ediborah Yap, had endured more than a year in captivity at the brutal hands of the terrorist group *Abu Sayyaf that has had links to the al-Qaida organization.*

We all know the news reports, some of them almost by heart, of the attempted rescue by the Filipino military, who, based on the details that I have, demonstrated heroism and bravery in the encounter. And the heartrending deaths of Martin and Ediborah and the wounding of Gracia. But today I want to remind all of us that while this may have been the end of their ordeal, it is not the end of their struggle, nor of ours.

The poet John Donne once wrote, ''No man is an island, entire of it selfe; any man's death diminishes me, because I am involved in Mankinde; and therefore never send to know for whom the bells tolls; it tolls for thee.''

September 11 was a wakeup call, but the bell still tolls. We must not let it go unanswered.

Some people have proclaimed that terrorism is simply a symptom of poverty and despair. That it is, if you can believe this, the logical response to a life of misery. I have one question then: Why kill those who are there to alleviate poverty, to lift despair, and to eliminate misery?

Terrorism is not a symptom of poverty, despair and misery. It is a cause. It is the root cause. These men and women do not just attack the concept of freedom and freedom-loving people everywhere, they terrorize their own people, they ravage their own country.

That is not logic, that is not strategy; that is evil. Yet, in the face of evil, people such as the Burnhams do not flinch. They have never flinched. When the governments have left, the missionaries are there. When the NGOs have left, the missionaries are there. When the charitable organizations have left, the missionaries are there.

There are some goals too great, some missions really just too precious, and so the missionaries are there. They keep going. They are always there. And they accept the sacrifices of their work in order to stay true to their calling. Even Gracia Burnham,on the day she arrived home to her children and her friends and family, seeing them for the first time in over 375 days, forcefully said, ''A very bad thing happened to Martin and I when we were taken hostage, but we want everyone to know that God was good to us every single day of our captivity.''

It is a statement emblematic of the strength, courage and, most of all, faith of both of them, and of all missionaries worldwide, who every day risk their lives to help others. In fact, the Burnham's story started out much like many others.

Martin first arrived in the Philippines in 1969 with his missionary parents. He returned to the United States after high school, met Gracia, graduated from Calvary Bible College and the Wichita Aviation Education Center, and then completed the New Tribes Mission training program, the New Tribes group out of Florida. Not surprisingly, he and Gracia then returned to the Philippines, remaining there ever since. In fact, their three children, Jeff, Mindy, and Zach, were all born in the Philippines.

And then, on May 27, 2001, while celebrating their 18th wedding anniversary, they were kidnapped.

It was not the marker of celebration they wanted—that of their love for each other and for God—but rather that of the beginning of this incredible, horrible journey.

The blame for the year of suffering that Martin, Gracia, and Ediborah Yap endured rests squarely upon the shoulders of the terrorist Abu Sayyaf Group. They were offered peaceful means to resolve this situation, multiple peaceful options. Yet this group insisted upon terror, murder, and rampage. They attacked Americans, and they attacked their own people. And they never hesitated to kill without compunction, without compassion, and without logic. Executing several prisoners, including another American that was taken hostage at the time as the Burnhams. Guillermo Sabero, a Californian, was beheaded by this same Abu Sayyaf Group.

Terrorists must understand every single U.S. citizen is important, that an attack on an American anywhere in the world is an attack on America itself.

Most of all, though, terrorists must understand—must be made to understand—that terrorism is never justifiable. Wanton violence that harms blameless men, women and children, unpredictable violence that strikes fear into innocent hearts and minds is not, and never will be justifiable.

As Philippines President Gloria Arroyo said, ''The fight against terrorism is our fight. It is the fight of all of mankind against evil.''

The bell tolls for all of us. Duty beckons all of us.

And the call is simple. We must continue to support the effort to eradicate the Abu Sayyaf Group and other terrorist organizations that threaten the security of the Philippines and other peaceful nations.

Already, U.S. assistance to the Philippines has produced results. Civil action and humanitarian projects are improving living conditions, and specialized training has resulted in a more capable military. Even Gracia Burnham noted, ''We especially want to thank the military men, the Fillipinos and the Americans, who risk, and even gave their lives, in order to rescue us.''

As seen by this rescue, the Abu Sayyaf Group is on the run, but it needs to be completely eliminated as a threat. I personally will continue to encourage any U.S. support requested by the Phillippine Government to assist them in their fight against terrorism and its causes, and to urge my colleagues to do so as well. After all, the struggle is not over, only this ordeal.

Just this morning, elements of the AFP, the Filipino military, were involved in a fierce battle with a group that calls itself the Pentagon. It is a splinter group from the Moro Islamic Liberation Front. This group has held a south Korean businessman captive since February 6, 2001. While defending their country from the scourge of terrorism, two Philipino soldiers were killed, and nine members of this extremist organization died. That was in this most recent firefight. More deaths, and for what?

Let me be clear. The deplorable actions of the Abu Sayyaf Group caused the deaths of Martin, Ediborah, and Guillermo. Let there be no equivocation on this point, the Abu Sayyaf Group is criminally culpable and must be brought to justice.

As we all know, terror begets terror, but justice produces justice. And a nation founded upon the rule of law has a special responsibility to share and enforce that vision.

This Friday, the Burnham family will be holding a memorial service for Martin, not to mourn, but to celebrate his life. Today, I ask all of us to do so, to celebrate Martin, to remember his family, and to recall our shared duty to ''provide for the common Defense'' and to ''define and punish . . . Offenses against the Law of Nations.''

These may seem to be the worst of times, but, like the Burnhams, we are a strong, resilient, and, most of all, hopeful people, and we will prevail.

As it says in the Beatitudes:

Blessed are the merciful, For they shall obtain mercy.
Blessed are the pure in heart, For they shall see God.
Blessed are the peacemaker, For they shall be called sons of God.
Blessed are those who are persecuted for righteousness' sake,
For theirs is the kingdom of heaven.

God bless you, Martin Burnham.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 5 minutes each.

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

Mr. LEAHY. Mr. President, I am delighted that the House of Representatives yesterday passed unanimously

the Mychal Judge Police and Fire Chaplains Public Safety Officers' Benefit Act of 2002, S. 2431.

Last month, the Senate passed unanimously my legislation to provide death benefits to the families of 10 fallen heroes of September 11. I again thank Senators CAMPBELL, SCHUMER, CLINTON, BIDEN and FEINGOLD for cosponsoring our bipartisan measure. I commend Representatives MANZULLO and NADLER for their bipartisan leadership on the House companion bill, H.R. 3297, and I thank House Judiciary Committee Chairman SENSENBRENNER and Ranking Member CONYERS for their strong support as well.

Named for Chaplain Mychal Judge, who was killed while responding with the New York City Fire Department to the September 11 terrorist attacks on the World Trade Center, this legislation recognizes the invaluable service of police and fire chaplains in crisis situations by allowing for their eligibility in the Public Safety Officers' Benefit Program. Father Judge, who was gay, was survived by his two sisters who, under current law, are ineligible to receive payments through the PSOB Program. This is simply wrong and must be remedied.

Indeed, Father Judge is among 10 public safety officers who were killed on September 11, but who are ineligible for Federal death benefits because they died without a surviving spouse, child, or parent. This bill would retroactively correct this injustice by expanding the list of those who may receive public safety officer benefits to the beneficiaries named on the most recently executed life insurance policy of the deceased officer. This change would go into effect on September 11 of last year to make sure the families of Father Judge and the nine other fallen heroes receive their public safety officer benefits.

In addition, this bill would retroactively restructure the Public Safety Officers' Benefit Program to specifically include chaplains as members of the law enforcement and fire units they serve, and would make these chaplains eligible for the one-time $250,000 benefit available to public safety officers who have been permanently disabled as a result of injuries sustained in the line of duty, or to the survivors of officers who have died.

Finally, I applaud the National Association of Police Organization, the Fraternal Order of Police, and the American Federation of State, County and Municipal Employees for their strong support for this bill to honor public safety officers and their families.

This legislation provides much-needed relief for the survivors of the brave public servants who selflessly risk and sacrifice their own lives everyday so that others might live. I look forward to President Bush signing the Mychal Judge Police and Fire Chaplains Public Safety Officers' Benefit Act of 2002 into law.

SOLUTION TO MTBE PROBLEM

Mr. SMITH of New Hampshire. Mr. President, by now, most everyone in the Nation has heard of the problems caused by MTBE (methyl tertiary butyl ether). I am very pleased that S. 950, the Federal Reformulated Fuels Act of 2002, reported by the Senate Committee on Environment and Public Works, has largely been incorporated into the Senate energy bill, S. 517, passed by the Senate on April 25, 2002. I would like to thank all those who worked with me to negotiate this comprehensive solution to the MTBE problem.

The legislative package provides Federal funding for cleanup of existing contamination and for prevention of future releases of MTBE, while preserving the environment and protecting the country from gasoline price spikes and fuel shortages. I would like to engage in a brief colloquy with the chairman of the committee so that we can provide an overview of the problems caused by MTBE and how this legislation solves these problems.

The problem that initially motivated the committee and the Senate to act on S. 950 and this issue in general is the existing MTBE contamination of water resources. Leaking underground storage tanks (USTs) are the major source of MTBE releases. Section 832 of this legislation authorizes $200 million from the Leaking Underground Storage Tank (LUST) Trust Fund for States to use for MTBE remediation. For this limited allocation of funds, the legislation waives the LUST requirement that the contamination be linked to an UST. Once in the environment, MTBE separates from other gasoline components and can quickly move far away from the source. Since MTBE contamination is difficult to trace, it is nearly impossible to establish a link between the contamination and a LUST.

In addition to cleaning up existing contamination, we must prevent future leaks from USTs because MTBE, in volumes much lower than current levels found in reformulated gasoline (RFG), may remain in gasoline for up to four years of enactment of this bill. To prevent future leaks, Section 832 of this legislation authorizes an additional $200 million from the LUST Trust Fund for States to use for activities to enforce existing UST regulations.

There is still more to learn about remediation of MTBE. Section 832 of this legislation authorizes $2 million for conducting bedrock bioremediation research and establishing an information clearinghouse. These authorized funds are intended to go to the Bedrock Bioremediation Center (BBC) at the University of New Hampshire. Currently, the BBC conducts research on bioremediation of various contaminants in fractured bedrock. This additional funding will allow the BBC to learn ways of cleaning up MTBE contamination in fractured bedrock and establish an information clearinghouse so that the newly developed remediation techniques may be shared across the nation. Once MTBE enters fractured bedrock, it is nearly impossible to remediate and equally as difficult to track. MTBE may contaminate wells that are many miles away from the original source. In simple terms, we can't get it out of bedrock and we can't tell where it will cause problems.

Mr. JEFFORDS. As the Senator from New Hampshire, the ranking member on the Environment and Public Works Committee, has pointed out, the committee acted to address existing contamination and to prevent future contamination. There are many sources of MTBE releases, including leaking underground storage tanks, motor vehicle accidents, fuel overfills, backyard mechanics and many more. With the numerous potential sources, the only way to ensure prevention of future contamination is to get MTBE out of gasoline. This legislation contains several provisions that work together to provide for quick reduction and eventual elimination of MTBE use in gasoline.

Section 834 eliminates the oxygen content requirement in Sections 211(k)(2) and 211(k)(3)(A) of the Clean Air Act. These provisions require RFG to contain two percent oxygen by weight. To satisfy this mandate, refiners must blend either fourteen percent MTBE or 5 percent ethanol into RFG. Elimination of the oxygen mandate will allow for a phase-down of the use of MTBE in RFG without requiring the use of ethanol in every gallon of RFG in certain non-attainment areas. But, RFG will still be required to meet all other statutory and regulatory requirements.

The elimination of the oxygen requirement also will allow refiners supplying RFG to the Northeast and many other States to use considerably less MTBE in RFG prior to the beginning of the phase out. MTBE is currently 3 percent of the national gasoline supply. Most of this is used in RFG areas, where MTBE volume in RFG is up to 15 percent.

The oxygen requirement is eliminated effective 270 days after enactment in order to provide time for EPA to put in place the anti-backsliding provisions included under Section 834 of this legislation.

Mr. SMITH of New Hampshire. In addition to elimination of the oxygen mandate, as the Senator from Vermont has indicated, this legislation requires EPA to make a determination about the adequacy of any pending RFG petition to waive the oxygen content requirements of section 211(k)(2)(B) for RFG. If EPA fails to act in the required time, the petition shall be deemed approved. Although this includes an opt-out or other request, EPA's failure to act results in automatic approval of the petition only to the extent that the oxygen content requirement for RFG would be waived. No other RFG requirements are affected. This provision only applies to petitions pending at the time of enactment of this provision.

The State of New Hampshire submitted to EPA a request to opt-out of the RFG program and set state fuel standards that are identical to the Federal RFG specifications, excluding the oxygen mandate. The EPA is instructed to interpret the New Hampshire RFG opt-out request as a request to eliminate the oxygen mandate. If the request is deemed adequate, either by EPA or by statute, the RFG sold and used in New Hampshire will not be required to adhere to the oxygen content requirement, effective immediately upon the adequacy determination.

The removal of the oxygenate requirement alone, however, is not enough to ensure the removal of MTBE from gasoline. Therefore, Section 833 of this legislation contains a provision that prohibits the blending of MTBE in gasoline within 4 years of enactment. The 4-year period is intended to allow fuel refiners to phase out the use of MTBE on a schedule that will not cause gasoline shortages or price spikes. The absence of a mandatory statutory phase down schedule is intended to give maximum flexibility to fuel refiners as they proceed to an MTBE-free gasoline supply.

The reference to use of MTBE in new section 211(c)(5)(A) of the Clean Air Act is meant to cover use by all persons. It includes all persons in the motor vehicle fuel production and distribution system, as well as ultimate consumer of the fuel and producers of MTBE. EPA's regulation may include appropriate provisions to implement this prohibition.

The findings listed in this section are intended to clarify that the elimination of the use of MTBE is intended to protect water quality. It is important to note that health concerns are not the main cause for Congressional action, based on information to date.

There is an allowance for de minimus amounts of MTBE to be present in gasoline because MTBE is sometimes produced in trace amounts during the gasoline production process. The Administrator will make a determination on what level is appropriate, but the legislation provides that it can be no more than .5 percent by volume.

Another provision gives States the authority to allow the use of MTBE in gasoline for sale and use within such State's borders. This provision is intended to allow a State to use MTBE should the State determine that other problems, such as increased air pollution, price spikes, or fuel supply shortages, outweigh any adverse impact MTBE may have on water quality. The regulations implementing this provision could allow production and distribution in other States for intended ultimate use in the notifying State, with appropriate safeguards to ensure that the fuel containing MTBE ultimately is only sold or used in the notifying State. Such rules, however, should not authorize production or use in a state that has banned MTBE and does not want it stored or handled there for fear of water supply contamination.

Section 833(d) is intended to hold harmless any legal recourse that the States may have during the on-going litigation over the efforts to impose or defend state MTBE bans or other legitimate actions to control or prohibit MTBE use or production.

Mr. JEFFORDS. The Senator has stated the essential point of this legislation and these provisions in the energy bill, that is the elimination of MTBE to protect water supplies. Its removal from the gasoline supply could encourage the replacement of fuel volumes with more toxic components, so section 834 of this legislation requires EPA to ensure maintenance of the toxics reduction over-compliance already achieved in RFG areas. EPA may comply with this requirement by amending the existing Mobile Source Air Toxics (MSAT) rule by updating the individual refinery RFG baselines from 1998–2000 to 1999–2000, and whatever other appropriate changes are necessary. We are advised by the Agency that any such changes should be minimal.

The MSAT rule currently makes a distinction between baseline volume, the average volume produced during the years 1998–2000, and incremental volume, or additional volume above baseline volume. These categories are treated differently under the rule and under this legislation. Under the rule, baseline volumes must adhere to new toxic reduction standards based on actual survey data from 1998–2000 and incremental volumes are held to the statutory or regulatory reduction, whichever apply. Under this legislation, the baseline volumes must adhere to the updated toxic reduction standard based on actual survey data from 1999–2000. Incremental volumes are treated the same as under the rule unless the actual toxics levels in any PADD exceed the average 1999–2000 levels. If there is an exceedance, EPA must revise the existing regulation to require incremental volumes of RFG, in addition to baseline volumes, to adhere to the updated individual refinery baselines.

The RFG program set statutory content and performance requirements. Through regulatory authority provided by the Clean Air Act, EPA chose, in 1993, to adopt performance standards for toxic air pollutants and volatile organic compounds (VOCs) rather than the prescriptive fuels formula allowed under Section 211(k)(3)(A). These performance standards required a 15 percent reduction in toxic air pollutants from baseline fuel starting in 1995 and maintained through 1999, and required a 21.5 percent reduction from baseline fuel beginning in 2000, as part of Phase II.

Motor vehicle emissions of toxics have been drastically reduced in RFG areas, though they are still a very substantial portion of the air toxics inventory in many areas. Over-compliance with the toxics reduction goals in the Clean Air Act has been largely due to the dilution effect of the oxygenates MTBE and ethanol, relatively toxic-free additives. RFG survey data suggest that refiners have achieved a 27 percent or higher reduction in toxic air pollutants from the 1990 baseline.

On March 29, 2001, EPA released a final strategy to further reduce air toxics emissions from motor fuels in an effort to comply with its responsibility under Section 202(l) of the Act. The strategy identified 21 mobile source air toxics (MSATs). It is intended to ensure that refiners continue over-compliance with RFG and anti-dumping requirements by maintaining their average 1998–2000 toxic emissions performance levels for baseline volumes of RFG and conventional gasoline. For incremental volumes, refiners must adhere to the regulatory standard of a 21.5 percent reduction. The MSAT rule is intended to ensure that toxics over-compliance is maintained regardless of whether any oxygenates are used. The MSAT rule commits EPA to revisiting additional fuel and vehicle MSATs controls in a 2004 rulemaking.

Section 834(b) supplements the air toxics provisions for RFG. Congress recognizes that EPA recently adopted regulations at 40 CFR part 80 Subpart J regarding air toxics performance of gasoline, including provisions for RFG. Congress intends that the regulations recently adopted by EPA are adequate to implement new section 211(k)(1)(B)(ii) and (iii), with the exception of the change in baseline year from 1998–2000 to 1999–2000 and any resulting baseline changes that may necessitate. The provisions in the current regulations for setting baselines, baseline adjustments, deficit carry-over, and the like should still all be appropriate under this new provision. While new baseline adjustments would not be allowed based solely on the new provision, prior baseline adjustments would not be affected, except as called for with the change in the baseline years. For example, the existence of a federal ban on MTBE would not automatically change any previously granted adjustments, and would not provide grounds for any new adjustments.

I would note that there is not wholehearted support for the MSAT rule at 40 CFR part 80 subpart J in Congress or in the States. The Northeast States for Coordinated Air Use Management has filed suit against the Agency claiming that this rule is inadequate to protect public health in the Northeast and inconsistent with the requirements in section 202(l) of the Clean Air Act. So, we have included a savings clause to be very clear that Congress has not blessed this rule through the inclusion of these anti-backsliding provisions.

Mr. SMITH of New Hampshire. Mr. President, the existing RFG regulations set separate standards for fuel sold in Northern and Southern RFG areas. Section 839 of the legislation we are discussing requires EPA to revise

existing RFG regulations to apply the stricter Southern requirements in all RFG areas nationwide. This will provide the Northern RFG States, including New Hampshire, with less-polluting Southern RFG. In addition, this provision will help to reduce the number of boutique fuels. This provision does not alter the Administrator's current ability to make volatile organic compound (VOC) adjustments for ethanol blends of RFG, like the existing adjustment given to Chicago and Milwaukee.

Mr. JEFFORDS. Because of that change and the other congressional actions on MTBE and renewable fuels, there are likely to be significant changes in the Nation's gasoline characteristics. Section 836 of this legislation requires EPA to study and report on the changes in emissions of air pollutants and changes in overall air quality due to the use of fuels and fuel additives resulting from this bill. This report will provide information to evaluate the success of the provisions of this legislation and should help identify problems that can be solved by statute or regulation before they are serious.

Section 211(c) of the CAA provides the Administrator with regulatory authority over fuels or fuel additives, if, in the judgment of the Administrator, the fuels or fuel additives or emission products cause or contribute to air pollution that may reasonably be anticipated to endanger the public health or welfare. This legislation adds authority to protect water quality, in addition to air quality. The bill requires the Administrator to exercise this regulatory authority to prohibit the use of MTBE. The bill also adds water quality as an environmental protection criterion in Title II of the act.

Mr. SMITH of New Hampshire. To address the inflexibility of the opt-in process for states that desire to use RFG to reduce emissions, section 837 of the Energy bill allows Governors of States within the Ozone Transport Region (OTR), to opt in any area to the RFG program. EPA must approve the request unless there is insufficient capacity to supply RFG to the area. Currently, only ozone nonattainment areas are allowed to opt in to the program. This legislation expands the program to include all areas within the OTR States. This will give those states, including New Hampshire, the opportunity to have one clean, MTBE-free RFG statewide. This provision is intended to provide cleaner fuel, address the boutique fuel problem, and help states achieve attainment.

The section addresses both the commencement and termination of the RFG requirements in areas in the OTR that opt-in to RFG under that provision. The provision on termination of the RFG program in these opt-in areas is not intended to change or modify in any way EPA's authority to adopt reasonable opt-out provisions under either section 211(k)(6)(A) or (B).

This section includes a provision that allows a temporary delay of the effective date of these requirements if there is insufficient capacity to supply gasoline to a State that chooses to opt in new areas to the RFG program. If EPA, in consultation with the Department of Energy, determines that expansion of the RFG program would result in insufficient supply of gasoline in the State, the effective date of the new opt-in areas may be delayed for a period of up to one year with the possibility of two more periods of up to one year each.

Mr. JEFFORDS. Section 838 of the legislation allows States to ask EPA to enforce any state-imposed fuel specifications that have been approved under processes established under Section 110 or Section 211(c)(4)(C) of the Clean Air Act. Effective and consistent enforcement of State and federal environmental laws is very important. States currently have very limited budgets for enforcement activities. To ensure full, faithful, and consistent enforcement of the state laws, this provision provides the ability for States to access additional federal resources for enforcement of state fuel specifications, once approved by EPA through the existing processes.

The section directs EPA to enforce certain state fuel controls or prohibitions in the same manner as if EPA had adopted the control or prohibition under section 211. This new provision is not intended to change in any way the requirements for approval of a State fuel control or prohibition in a SIP, including the requirement that it be enforceable by the state. It is also not intended to limit EPA's enforcement discretion. EPA would have the same discretion in enforcement matters with respect to these state fuel controls or prohibition as it would with a federal fuel control or prohibition adopted under section 211.

Mr. SMITH of New Hampshire. To avert air quality problems that might arise through increased use of ethanol, pursuant to the renewable fuels requirements, section 819(c) of the legislation allows States to eliminate the RVP waiver for gasohol if such waiver will increase air pollution in any area within the State. If a state determines the waiver will cause air quality problems, the State may submit notification, accompanied by supporting documentation, to EPA indicating that the stricter RVP limit must be applied to gasohol within the state. This provision will help new ethanol using states to control evaporative air pollution emissions from gasohol.

This section includes a provision that establishes a temporary delay of the effective date of these requirements if there is insufficient capacity to supply gasoline to a State that chooses to eliminate the ethanol RVP waiver. If EPA, after consultation with the Department of Energy, determines that elimination of such waiver would result in an insufficient supply of gasoline in the State, refiners may be allowed to retain the ethanol RVP waiver for a period of up to 1 year with the possibility of two more periods of up to 1 year each.

Mr. JEFFORDS. In order to prevent future problems similar to the MTBE debacle, Congress is expanding EPA's existing authority to regulate fuel additives. The current provisions of the Clean Air Act provide a process for EPA and authorized States to regulate fuels and additives in order to protect air quality. This legislation amends that process by allowing fuel and additive regulation in order to protect water quality, as well. If this authority already existed, EPA and the State of California might have been able to address the MTBE problem before it became acute without Congressional action.

There is also an additional prophylactic provision that requires EPA to study the health, air quality, and water quality effects of fuel additives and blend stocks that may be used as replacements for MTBE. The bill specifically lists ETBE, TAME, DIPE, TBA, ethanol, iso-octane, and alkylates as additives to be studied.

The existing law allows the Administrator to require fuel producers to conduct tests to determine the health and environmental effects of fuels and fuel additives. This provision mandates that the Administrator regularly require fuel and fuel additive manufacturers to conduct testing and supply information on the effects of those substances on public and environmental health.

Congress intends that the Administrator should use this authority to identify and assess any adverse public health, welfare, or environmental effects from the use of motor vehicle fuels or fuel additives or the combustion products of such fuels or fuel additives. The Administrator should use the authority to assess threats to both air pollution and water pollution in order to effectively exercise the authority in Section 211(c) as amended by this legislation.

The Blue Ribbon Panel on Oxygenates in Gasoline recommended that EPA and others accelerate ongoing research efforts into the inhalation and ingestion health effects, air emission transformation byproducts, and environmental behavior of all oxygenates and other components likely to increase in the absence of MTBE. This should include research on ethanol, alkylates, and aromatics, as well as on gasoline compositions containing those components.

Mr. SMITH of New Hampshire. In order to limit potential negative impacts on gasoline prices and fuel supplies, the legislation authorizes a total of $750 million over three fiscal years to promote production of other fuel additives. This funding is intended to provide grants to merchant MTBE producers for retooling existing facilities to produce other clean fuel additives, such as iso-octane, in order to avoid any fuel shortages that may have otherwise resulted from the elimination of the use of MTBE.

According to a report from the EPA, the impact of the Federal Reformulated Fuels Act on the fuel supply could range from a one percent shortage to a one percent surplus. The report further stated that, due to the transition assistance, the actual impact is more likely to be on the surplus side.

Mr. JEFFORDS. The renewable fuels and MTBE provisions contained in H.R. 4, as passed by the Senate, constitute an agreement among many competing interests that is designed to get rid of MTBE and increase renewable fuel use.

After the reformulated gasoline program went into effect in 1995, many refiners chose to use MTBE to satisfy the minimum 2 percent oxygen requirement of the program. Oxygenates reduce tailpipe emissions of carbon monoxide and other ozone precursors and provide a clean source of high octane, thereby displacing such toxic gasoline octane enhancers as benzene, toluene, and 1,3 butadiene. After implementation of the RFG program, increasing detection of MTBE in ground water and surface water led California to establish a schedule to ban MTBE and 13 other States have followed with their own MTBE bans.

It became clear that the combination of a phase out of MTBE in these states and the continued existence of the two percent oxygen content requirement for RFG could result in a potentially disruptive and abrupt transition to ethanol in states that did not have a history of using ethanol. To facilitate the ban of MTBE, and to provide greater flexibility in producing RFG, states and refiners requested Congress and the administration to lift the RFG oxygen requirement. At the same time, ethanol producers saw a major opportunity for market growth and were reluctant to support elimination of the RFG oxygen requirement.

To address the challenge of maintaining market growth for ethanol, providing greater flexibility in making clean-burning gasoline, and reducing the use of MTBE, Senators LUGAR and DASCHLE in 2000 introduced the Renewable Fuels Act, S. 2503. That bill would allow States to waive the 2 percent oxygen requirement and established a nation-wide renewable fuels standard (RFS) to roughly triple the use of ethanol from current levels over 10 years. That RFS requirement would apply to refiners, who would be able to generate, bank, and trade credits for the use of renewable fuels, such as ethanol and biodiesel. This mechanism was designed to increase the use of renewable fuels, provide maximum flexibility in the use of those renewable fuels, while ensuring that eliminating MTBE from gasoline supplies will not lead to greater dependence on foreign oil. As a result of the credit trading and banking, refiners will use renewable fuels where and when it is most economical to do so, and no State will need to use any particular amount of renewable fuel.

That legislation also established that ethanol produced from cellulosic biomass, which is particularly energy-efficient and produces superior greenhouse gas benefits, would receive 1.5 credits for every gallon used. This should spur the establishment of new ethanol facilities across the United States that will use wood waste, municipal solid waste, switchgrass, and other innovative feedstocks.

In September of 2000, the Environment and Public Works Committee passed legislation, S. 2962, which incorporated many of the elements of S. 2503, but Congress adjourned prior to enactment of that bill. The EPW Committee again took up the issue in September of 2001, passing legislation to allow states to waive the oxygen requirement, banning MTBE, and providing additional resources for cleaning up MTBE contamination, but not including a renewable fuels standard. As the Senator from New Hampshire mentioned earlier, that legislation, S. 950, was largely incorporated into S. 517, the Energy Policy Act. A separate section establishing a renewable fuels standard also was included in S. 517. Subsequently, negotiations between the Environment and Public Works Committee, the Energy Committee, and ethanol, public health, environmental, and petroleum interests produced a compromise that replaced the initial MTBE and renewable fuels provisions of S. 517.

During debate on the RFS, concerns were raised that it could lead to gasoline price increases. In response, Senators MURKOWSKI and DASCHLE asked the Energy Information Administration (EIA) to evaluate the potential costs of implementing the RFS, as well as the other fuels provisions in S. 517. The EIA found that the RFS would raise gasoline prices by less than 1 penny per gallon in RFG areas and less than one-half a cent per gallon nationwide. The EIA also noted that these were upper-bound estimates that did not account for the economic benefits that would result from the credit trading and banking provisions. The American Petroleum Institute estimated that the maximum cost increase for a gallon of gasoline due to the implementation of the RFS would be less than one-third of a cent per gallon.

Concerns have also been expressed that requiring the nation to use more renewable fuels could lead to supply shortages and price increases. The evidence suggests that there will be abundant supplies of renewable fuels to meet the RFS. The RFS begins in 2004, requiring 2.3 billion gallons of ethanol to be used in that year. According to the California Energy Commission report on nationwide ethanol supplies, issued in August of 2001, there will be 2.7 billion gallons of ethanol capacity in place by then, so renewable fuels supplies should be plentiful.

Nevertheless, additional consumer protections were incorporated into the legislation. Under the bill, the Department of Energy is required to evaluate supply and logistics of transporting and blending renewable fuels. If problems are anticipated, the Administrator of the Environmental Protection Agency is instructed to reduce the level of the RFS in 2004. In subsequent years, States that are concerned about renewable fuels prices or supplies may apply to the Administrator of the Environmental Protection Agency to reduce the RFS in whole or in part. State applications must be acted upon within 90 days.

The legislation creates a narrow prospective safe harbor from liability for defect in design or manufacture of a renewable fuel by virtue of it being mandated by this legislation. To qualify for this limited protection, manufacturers of such fuels must have evaluated them for EPA with respect to their toxicity, carcinogenicity, air quality impacts, water quality impacts and they must be used in compliance with any restrictions imposed by EPA. All other causes of action or damages available under applicable State or Federal law are unaffected by this legislation including, but not limited to, negligence, duty to warn, personal injury, property damage, environmental damage, wrongful death, compensatory damages, and punitive damages.

The Senate passed its bill on April 25 and appointed conferees on May 1. We should move quickly to begin this conference because there are many difficult matters to negotiate. Fortunately, the compromise provisions which we have been discussing relating to MTBE and renewable fuels appear to have broad support, judging from the votes in the Senate, and should be amenable to swift agreement among the energy bill conferees.

So, as I mentioned during the debate on S.517 as part of my summary of these provisions, this is not an ideal package, but it meets the test of improving and protecting air and water quality and promoting renewable energy.

Mr. SMITH of New Hampshire. Mr. President, I agree with the chairman that this legislation is not ideal, but it accomplishes our main goal of remediation and prevention of MTBE contamination. I am pleased that the House has appointed its conferees today and I hope that we can move that conference to an expeditious conclusion maintaining the integrity of the compromise that we worked out here in the Senate.

SUPPORT FOR THE LOCAL LAW ENFORCEMENT ENHANCEMENT ACT

Mrs. BOXER. Mr. President, I was deeply disappointed that the Senate did not have enough votes to move forward on the hate crimes bill—even though a clear majority of the Senate supports this important measure.

During the debate, many of my colleagues addressed the constitutionality of this legislation, and the role that the Federal Government should play

with regard to hate crimes. What speaks volumes to me about the importance of this legislation—and the reason the Senate's inaction is so disappointing—are the stories. The people behind the numbers. The victims and the survivors.

In the strong hope that we will revisit this matter in the near future, let me share some of these stories—some of the awful realities of the crimes we are talking about. The most recent happened just last week in Riverside, CA.

Last Thursday, two gay men were stabbed repeatedly in the back outside a popular gay bar. One of these men, 40-year-old Jeffrey Owens, died hours later. Michael Bussee, 48-years-old, managed to survive.

According to the media reports, both men had come to the bar to celebrate a friend's birthday. After leaving the bar with their partners, Jeffrey Owens wanted to show everyone the pictures he had taken on a recent trip to Joshua Tree National Park. When he went to retrieve the pictures in his car, a man approached Michael Bussee, punched him, and then stabbed him in the back. Noting the commotion, Jeffrey Owens approached the perpetrator, and was stabbed four times in the back. Before stabbing Jeffrey, the attacker screamed a homophobic slur.

Apparently, neither man knew how badly he had been hurt. Jeffrey Owens didn't even realize he had been stabbed until he stepped out of the car at the county hospital in Moreno Valley, when his friends saw his blood-soaked seat.

Jeffrey Owens died hours later, after two operations. Michael Bussee was treated and released.

There are countless other stories I could share with you, but I will only touch on a few of them here today.

On September 7, 2000, a Los Angeles resident was charged with murder and hate crimes for allegedly killing a 65-year-old Hispanic man, Jesus Plascensia, by running him over at least twice in a parking lot. Authorities say she made comments about her hatred of Hispanics after she murdered him and referred to him as ''dead road kill.''

On September 18, 2001, someone threw a Molotov cocktail through the window of a Sikh family's home in San Mateo, CA. The fuse was lit but, due to some miracle, the firebomb did not explode as it hit the head of a 3-year-old child in the house.

In Santa Barbara, CA, a 37-year-old gay man named Clint Scott Risetter was killed after an alleged arsonist poured gasoline over him while he slept and set him on fire. The perpetrator says he killed Risetter ''because he was gay,'' and because he had ''a lot of hatred toward gay people.''

And the list goes on and on. These stories are what make this bill so vitally important.

This bill would extend current Federal hate crime protection—which covers race, religion, color and national origin—to gender, sexual orientation and disability. It would also make it easier to prosecute hate crimes at the Federal level.

It is an extremely important tool to help our already overtaxed State and local law enforcement by allowing Federal assistance, when necessary, in the investigation and prosecutions of hate crimes.

It would provide Federal assistance to State, local and Indian law enforcement officials who have run up extraordinary expenses in connection with their investigation and prosecution of hate crimes. It would also provide training grants to help local law enforcement officers identify, investigate, prosecute, and prevent hate crimes. Finally, it would allow the Justice Department to back up local law enforcement by removing arcane obstacles that prevent effective prosecution of hate crimes motivated by race, color, religion, or ethnicity.

This bill has broad support from notable law enforcement agencies and state and local leaders, including 22 state Attorneys General, the International Association of Chiefs of Police, the National Sheriff's Association, the Federal Law Enforcement Officers Association, and others. With this broad-based support, and with the need so clearly urgent, this bill should be immediately passed.

Two years ago we stressed the importance of passing hate crimes legislation. We cited the examples of James Byrd, Jr., of Matthew Shepard, and others. And we passed it.

Here we are, two years later, making the same arguments and conducting the same debates. This time, the victims have new names: most recently, in my State of California, names such as Jeffrey Owens, Michael Bussee, Jesus Plascensia, and Clint Scott Risetter.

The time to act is now. It is my hope that we will pass this vital legislation by the end of this year.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred June 1, 2001 in Modesto, CA. The home of an inter-racial couple and the couple's two children were threatened when someone threw a Molotov cocktail at the couple's home. Police believe it was a hate crime, citing other evidence such as a watermelon thrown on the driveway, a box of grits, a frozen bag of black-eyed peas, and a 40-oz. King Cobra beer.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

LEGISLATION TO DENY U.S. TAXPAYER MONEY TO ARAFAT AND THE PALESTINIAN AUTHORITY

Mr. SMITH of New Hampshire. Mr. President, I rise today in support of my legislation to prohibit any U.S. taxpayer money from ending up in the hands of Yasser Arafat and the Palestinian authority.

Unfortunately, Yasser Arafat is not a partner in the peace process.

As long as the United States continues to provide money to the Palestinian authority through grants to non-governmental organizations, some of that money will end up in the hands of those who wish to do harm to Israel.

We must stand shoulder to shoulder with Israel in the war against terrorism.

We must also send a clear message to Yasser Arafat and the Palestinian leadership that the United States will not tolerate terrorism against Israel.

Israel is a true friend and ally.

And, as a Nation, we share many of the same values—democracy, respect for human rights, freedom of the press, a strong desire for peace and prosperity, to name but a few.

During the Camp David summit in July of 2000, it was Israel that was prepared to make tremendous concessions to ensure peace in the Region.

As we all know today, Arafat refused to reach a peace agreement, and walked away from the negotiating table.

Yasser Arafat did not want peace because he needs the conflict for them to stay in power.

Instead of peace, they chose terror.

My staff has compiled a list of terrorist attacks on Israel last year. In 2001, 79 attacks cost 160 innocent Israelis their lives, and wounded another 1,200. Since then, of course, we have all seen the tremendous cost in human lives and misery from many more terrorist attacks on innocent civilians, and the resulting isolation of Yasser Arafat and the civilized world's condemnation of the Palestinian authority.

We dare not forget the level of terror visited upon Israel by Palestinian terrorists.

Arafat is using his own personal forces to attack Israel through suicide attacks.

Furthermore, he is allowing Hamas and Islamic Jihad safe harbor in the West Bank and Gaza Strip.

Hamas and Islamic Jihad are two of the most heinous terrorist organizations in the world, responsible for the deaths of numerous innocent people.

Keep in mind, at one time, Arafat promised to get rid of these organizations.

Arafat's promises are worth nothing.

It is wrong to ask American taxpayers to subsidize the Palestinian authority when Yasser Arafat uses the resources of the Palestinian authority to attack innocent men, women, and children in Israel.

We have seen video footage of the Palestinian people cheering and dancing in the streets after the September 11th attacks—many holding posters of Saddam Hussein.

Yet, while we have sanctions against Iraq, we are providing millions of dollars in aid to the Palestinian authority through non-governmental organizations.

We know well that any funds, even designated as humanitarian, free up money that Arafat can use for his army of human bombers.

If there is any doubt in anybody's mind that Yasser Arafat promotes terrorism, I would like you to consider the order on the official letterhead of the presidential bureau of the Palestinian authority/Palestine liberation organization, bearing the signature of Yasser Arafat just 8 days after our country was attacked on 911, ordering $600 be paid from the treasury of the Palestine authority to each of three terrorists. Two of them are senior activists of the Fatah terrorist group, and one of these, Ziad Da'as, is the head of the group behind a recent deadly terrorist attack on a bat-mitzvah party in Israel. The Israeli defense ministry says they recently captured this document at Arafat's office in Ramallah.

Also, I ask my colleages to consider the order from Yasser Arafat to the finance ministry of the Palestinian authority from January 7th of this year. In this document, Arafat orders the disbursement of $350 to each of the 12 named Fatah activists. According to the Israeli Defense Ministry, who captured this document at Arafat's headquarters in Ramallah, each of these 12 individuals are known terrorists, belonging to Fatah and or Tanzim. Arafat's approval is given in response to a request of Ra'ed Karmi, then the head of the Fatah and Tanzim Terror Groups, which perpetrated numerous murderous attacks on innocent Israeli civilians since September 2000.

American aid to the Palestinian authority allows Arafat to focus more of his resources on attacking Israel.

We need to make sure no taxpayer money ends up in the Palestinian authority.

My legislation would do just that.

As recently as April 7th of this year, Tim Russert on ''Meet the Press'' asked the Secretary of State to deny that Arafat is funding terrorism. Here Is what he said:

Russert: Israel says documents link Arafat and terrorism. They seized documents and made them public, which linked the office of Yasser Arafat with terrorist attacks carried out against Israeli civilians and other targets. One of the documents, said to be an invoice submitted by a leading Palestinian militant group to a Palestinian official, among other items, the invoice requested 20,000 Israeli Shekels, $4,200 American, to buy electrical and chemical components for the production of a month's supply of 30 bombs. It's an invoice of terrorism, said Dori Gold, an advisor to Prime Minister Sharon. [Mr. Secretary,] do you believe the Palestinian authority harbors or supports terrorism?''

Do you know, what our Secretary of State replied?

Did he deny the authenticity of this document? He did not.

Did he deny that Arafat paid the bill? He did not.

Did he deny that our taxpayer dollars are thus funding the killing of innocent men, women and children? He did not.

What he said was, ''It is a complex situation''.

There's nothing complex about it! Our tax dollars should never be used for terrorism. Period. End of discussion!

After our Nation was brutally attacked on September 11, President Bush set a new direction in U.S. foreign policy.

He Said, ''From this day forward, any Nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime.''

By any honest assessment, Yasser Arafat both harbors and supports terrorism.

On the other hand, Israel is a good friend of the United States and the only democracy in the middle east.

I repeat, we must stand unequivocally by Israel, and do everything in our power to support her.

The record is clear.

Israel is a friend of the United States, Yasser Arafat is not.

We can't expect Israel to negotiate with individuals who wish to destroy Israel's very existence.

We must also ensure that we in no way support Arafat's oppressive regime by providing money to organizations affiliated with the Palestinian authority.

Every dollar that we send to the west bank and Gaza is a dollar that could potentially be used to support terrorism.

I strongly urge my colleagues to stand with me on the side of Israel and vote for my legislation.

HUMAN CLONING PROHIBITION ACT

Mr. DORGAN. Mr. President, earlier this week I modified my bill, the Human Cloning Prohibition Act, S. 2076. I originally introduced this bill in an attempt to forge a consensus on what I thought was a straight-forward concept, the banning of reproductive cloning or the cloning of a human being. When I introduced the legislation, I stated: ''It is a simple bill, but it reflects my view and a view that is held by almost everyone. . . . My legislation makes it illegal to clone a human being and imposes strict penalties against anyone who violates this prohibition.''

However, in recent weeks those who oppose my legislation have interpreted the language of my bill in a manner that is not consistent with the intent of the bill. They argue that my bill as originally introduced would allow a cloned embryo to be implanted into the uterus and ''harvested'' at some point prior to birth.

I do not believe the language of my bill allows that, and it is certainly not the intent of the bill. But, in order that no one can misinterpret the intent of my bill, I am making an adjustment in the bill language. The revised language will define human cloning as ''implanting or attempting to implant the product of somatic cell nuclear transfer, or any other cloning technique, into a uterus or the functional equivalent of a uterus.'' It makes it unlawful for ''any person to conduct or attempt to conduct human cloning.'' The bill retains the strict penalties against violators that were present in the original version.

My legislation is silent on the matter of therapeutic cloning or what some call ''regenerative medicine.'' I understand that this is a topic that needs thoughtful discussion and debate. It is a subject that is addressed in other bills now before the Senate.

I respect those who support the Brownback bill and wish to prohibit what is called somatic cell nuclear transplantation or the cloning of stem cells. This is a difficult subject and there is plenty of room for thoughtful disagreement in the debate. But I don't believe that we should prohibit the promising research that could lead to cures for diseases such as diabetes, Alzheimer's, cancer, heart disease and more. I agree with Nancy Reagan, former President Ford, ORRIN HATCH, and others that this kind of regenerative medicine conducted under strict guidelines and controls can offer great hope to tens of millions of Americans and can save lives.

The debate on that matter is left to other legislation. My bill applies only to the issue of prohibiting the cloning of a human being and I hope that this change in the language will no longer leave room for those who are opponents to misinterpret or misunderstand its intent.

ADDITIONAL STATEMENTS

ALEUTIAN CAMPAIGN OF WORLD WAR II

• Mr. STEVENS. Mr. President, I submit the following newspaper articles commemorating the 60th anniversary of Aleutian Campaign of the Second World War and the veterans who served there. This campaign was the only action actually fought on American soil during the war. The men who served there endured not only the horrors of combat, but also one of the harshest environments on Earth. Fighting and, in many cases, dying, to prove that

Americans are dedicated, at all cost, to the principle that no corner of our country, no matter how remote, will ever be ceded to our enemies.

For those who wish to learn more about the Aleutian Campaign, I recommend ''The Thousand Mile War'' by Brian Garfield. It illustrates the strategic importance of the battles of Dutch Harbor, Attu, and Kiska. Garfield has vivid descriptions of the long, hard campaign to push the Japanese off American soil.

I ask to print the aforementioned articles in the RECORD.

The material follows:

[From the Anchorage Daily News, June 3, 2002]

MEMORIES OF WAR: SIXTY YEARS AGO, BOMBS FELL ON DUTCH HARBOR AND TURNED ALASKA INTO A BATTLEGROUND

(By Gabriel Spitzer)

To Japan during World War II, the Aleutian Islands looked into North America. It was on the Aleutians that the enemy set foot on American soil for the first time since the War of 1812.

Sixty years ago, on the morning of June 3, 1942, 16 Japanese fighters and bombers streaked eastward toward Dutch Harbor, off Unalaska Island. Bombs rained down for about 20 minutes on the Navy facilities there. The next day the Japanese forces returned in greater numbers. By the end of the second day, 35 American men were killed and 28 more were wounded.

Johnnie Jenkins, a 25-year-old Navy mess cook, was in his barracks the morning of June 3 when the explosions woke him. He said he jumped from bed and threw on his clothes, one shoe on and the other in his hand.

''I stood in the doorway, and I saw a Japanese plane coming in with a rising sun on it,'' said Jenkins, now living in Anchorage. ''Lord, my heart started pumping and I was so scared. I thought, this is it. I just froze right there.''

Jenkins, who is African-American, looked around for cover.

''I saw a white fellow in a foxhole, and he stood up. I ran over there. He said, 'You can't come in here, I'm from Alabama.' I said, 'I don't give a damn where you're from. You move on over!' And he did.''

One of the many civilians at Dutch Harbor was 22-year-old shipwright Bob Ingram, now living in Fairbanks. Ingram was getting ready for an ordinary day of work when the bombs began to fall.

''Somebody yelled 'air raid'. We saw airplanes, quite a few in the sky,'' he said.

''Somebody said, there's been a number of men killed, and they're going to need caskets. Now, if there's one thing you don't need during an air raid it's caskets. But we wanted to help. So we started to make caskets out of plywood, 2 feet square and 6 feet long.''

As inviting as the Aleutians may have seemed on the map, the Japanese quickly found them an inhospitable invasion route. Often bathed in fog and pounded by frequent storms, the islands proved difficult to scout and navigate. This, coupled with American intelligence reports, led to victories for the United States but not before Japan had occupied two Alaska islands and drawn American forces into one of the costliest battles of the Pacific theater.

Japan had little intention of actually invading the U.S. mainland from the Aleutians. Instead, it hoped to occupy a few islands in the North Pacific to solidify its naval perimeter and protect itself from American incursions by sea and air. It also hoped to pull America's might away from its main objective, the South Pacific, Hawaii and perhaps Australia.

The Dutch Harbor raid was a diversionary tactic, meant to draw attention from Japan's assault on Midway Island, planned to occur at the same time that American forces were distracted by the attack on Alaska.

But unknown to the Japanese, U.S. code breakers had cracked the enemy's top secret ''purple code'' and were able to prepare for the attacks. U.S. soldiers at bases throughout the Pacific were put on alert.

One of them was Marine Corps Pvt. Howard Lucas, stationed on Kodiak Island.

''We were ready for somebody to come up over the hill and get us,'' said Lucas, 79, who lives in Palmer.

Lucas spent two weeks on alert 24 hours a day, manning an antiquated World War I-era water-cooled machine gun.

''It was scary,'' he said. ''But they never showed up. Nobody knew what they were going to do, the Japanese included, I guess.''

By the morning of June 3, the fog of war, both literal and figurative, had wreaked havoc on both sides.

That day, planes on the Japanese carrier *Junyo* never reached Dutch Harbor, grounded by weather. At the same time, a radio message warning American forces of the impending attack failed to reach its destination.

In the two days of bombing and the days immediately before, the weather made a mockery of both sides' battle plans.

Historians estimate that both sides sustained more casualties related to the weather than from actual combat. American forces lost four times as many planes to weather-related accidents as they did in battle.

Although U.S. casualties greatly outnumbered Japanese losses at Dutch Harbor, by the end of the assault Japan was on its heels. Its attack on Midway proved a major defeat, and American intelligence had foiled Japan's naval ruse.

Rather than abandon the Aleutian campaign, Japanese forces occupied the western islands of Attu and Kiska. On Attu, 1,200 Japanese troops surrounded and captured 39 Aleut villagers.

On Kiska, the invaders found only a weather station guarding the island. Still, scores of Aleuts and about a dozen white Americans were captured in the attacks and spent the rest of the war as prisoners in Japan.

Drafin Delkettie, one of the few living members of the celebrated Combat Intelligence Platoon, Alaska Scouts, was stationed on the island of Amchitka, about 40 miles east of Japanese-occupied Kiska.

During that time, Delkettie, who lives in Anchorage, experienced what the soldiers at Dutch Harbor felt.

''They bombed and strafed us every morning at 10 a.m. and every evening at 6 p.m. They never missed it by a minute. Sometimes we played pinochle or something, waiting for them to come,'' he said.

Which didn't make it a game. ''No matter where the bombs are falling,'' he reflected, ''It's scary.''

[From the Anchorage Daily News, June 3, 2002]

WAR CAME TO ALASKA . . . SIXTY YEARS AGO

It was early on a Wednesday morning, that day of June 3, 1942, when war came to Alaska.

Sixty years have passed since then. The war has come and gone. But the memories are seared deeply in the minds and hearts of those whose lives were touched by the long fight against enemies of freedom.

World War II began officially for the U.S. on Dec. 7, 1941, with Japan's surprise air attack on Pearl Harbor in the territory of Hawaii.

It was six months later that Japanese bombers delivered the first bombs on the territory of Alaska, attacking Dutch Harbor and nearby Fort Mears—timed to coincide with Japan's assault on Midway, far to the south in the Pacific.

Today's anniversary of the start of the battle in the Aleutian Islands—the only action actually fought on American soil during the war—is a reminder that American soldiers, airmen and sailors put their lives on the line to drive enemy forces from Attu and Kiska.

One of those, Army Pvt. Joe P. Martinez of Company K, 32nd Infantry, was posthumously awarded the Medal of Honor for gallantry above and beyond the call of duty.

Despite facing what the War Department called ''severe hostile machine-gun, rifle and mortar-fire'' from both flanks and from enemy forces protected by snow trenches ahead of him, Martinez used his automatic rifle and hand grenades to lead repeated charges up a rocky, knife-like ridge to a snow-covered mountain pass.

Just below the rim of the pass, Martinez encountered a final enemy-occupied trench and while firing into it was mortally wounded. But soldiers following in his footsteps then were able to capture the pass, described in the citation awarding him the nation's highest medal as ''an importance on the island.''

The war is decades in the past now. Old enemies have become friends.

But Alaskans of today should never forget that in the Aleutians, now a proud part of the 49th State, young Americans gave their lives years ago to drive invading forces from our land.

It's worthy of remembering on today's anniversary of that first raid on Dutch Harbor.●

EULOGY FOR REVEREND JAMES L. STOVALL

● Mr. BREAUX. Mr. President, my State of Louisiana recently mourned the death of one of our most notable and renowned religious leaders, Reverend James L. Stovall, a minister of the United Methodist Church for thirty years and the founder of the Louisiana Coalition Against Racism and Nazism. In 1989, fearful of the rise of former Ku Klux Klan leader David Duke, Reverend Stovall led the effort to bring together people of faith and other citizens to oppose the hatred and bigotry espoused by Duke and many of his supporters.

As a participant in the Louisiana Senate election of 1990 and the governor's election the following year, I can attest to successful efforts of Reverend Stovall and his Coalition in exposing for Louisiana and the world Duke's harmful and divisive racist record.

Those who did not know James Stovall might not have known that his role in forming and leading the Louisiana Coalition Against Racism and Nazism was merely the culmination of a life and career dedicated to championing human rights and better relations among people of all faiths, ethic backgrounds, and nationalities. As one of his daughters said to a newspaper reporter after his death on May 17, ''He had a genuine sense of caring about

people and a strong sense of right and wrong.''

James Stovall was born in Winn Parish, graduated from Centenary College in Shreveport and the Perkins School of Theology at Southern Methodist University. During the Second World War, he served this country as a chaplain attached to the Marine Corps. Following the war, he returned to Louisiana where, for thirty years, he served Methodist churches in Eunice, Baton Rouge, Lake Charles, Lafayette, Metairie, and Monroe. A strong believer in ecumenism, he was a leader in the creation of the Greater Baton Rouge Federation of Churches and Synagogues, and from 1976 to 1991, he served as executive director of the Louisiana Interchurch Conference.

Reverend Stovall served not only the church, but held several positions in State government. He was executive director of the Governor's Office of Elderly Affairs from 1979 to 1980, chairman of the Governor's Pardon and Parole Study Commission in 1976, and a member of the Louisiana Commission on Human Rights in 1992.

At his funeral service in Baton Rouge, one of Reverend Stovall's good friends, Dr. Lance Hill, who is executive director of the Southern Institute for Education and Research at Tulane University New Orleans, shared a powerful story about his legacy. I would like to quote from that eulogy at this time:

Many years ago Jimmie told me that John Wesley, the founder of the Methodist Church, once noted that a man's achievements in this lifetime are fleeting and insignificant; what is meaningful is the shadow that he casts into the future. We formed the Southern Institute for Education and Research at Tulane University nine years ago to continue the work of Jimmie Stovall and the anti-Duke coalition, but this time through a proactive program that taught young people the consequences of prejudice and the individual moral obligation to speak out against the oppression of others.

The Southern Institute is very much Reverend Stovall's gift to Louisiana. I told Jimmie years ago that we should have named it the Stovall Institute, but people might think it was a [football] clinic. Jimmie just laughed, but he knew what I meant. The work of the Institute is part of Jimmie's vast shadow cast into the future.

A few months ago, I returned to St. Catherine of Sienna, a school in the middle of [David] Duke's old legislative district. We had worked with the teachers and students there for years. That day I watch 150 students mesmerized by the story told by Eva Galler, a Holocaust survivor. The students heard the story of Eva's leap from the train to Auschwitz; the destruction of her family; the end of the world as she knew it. Eva told them that this was not simply a story of Jews and Nazis, it was a story of racism and hatred. It could happen anywhere, anytime, and they had a moral obligation to resist hatred at every turn.

I watched three young boys on the back row, sitting on the edge of their seats, straining to see over the tall girls in front of them. They were transfixed by Eva. And as Eva spoke, I saw the soft, warm shadow of Reverend Stovall envelop the children. These children, the next generation of leaders in Louisiana, these children were his legacy. In this sense, James Stovall achieved a kind of immortality that only the best of us can ever dream of. We will miss him in body, but he will always be with us in spirit.

I extend my heartfelt condolences to Reverend Stovall's daughters, sisters, grandchildren, and great-grandchildren. In the midst of their grief, I hope that they will be comforted to know that his important work and the principles that guided him in that work will not soon be forgotten.●

RECOGNIZING KELLY CAMPBELL

● Mr. ALLEN. Mr. President, today I recognize Kelly Campbell, a student at Lebanon High School in Lebanon, VA, who has been chosen to make a presentation at the White House Visitors Center during the National History Day Celebration.

Kelly is one of 16 young history scholars from across the country who will present their work reflecting this year's National History Day theme: Revolution, Reaction, Reform in History. The students' projects presented at the White House are part of a larger group of 2,000 finalists participating in the National History Day national contest at the University of Maryland.

The National History Day Program engages more than one-half million participants annually in grades 6 through 12 in 49 states and the District of Columbia. The program provides students the analytical and research skills that are useful in any area of their lives. Students research history topics of their choice related to an annual theme and create exhibits, performances, documentaries and papers, which they may enter in competitions at the district, State and national levels.

Kelly will present an exhibit entitled ''The 3 R's: Revolution, Reform, Reaction and the Schools of the Freedman's Bureau.''

During my term as Governor of Virginia, we recognized that there are fundamental academic basics that our children must learn if they are to be capable, responsible, and contributing citizens, and able to compete and succeed in the future. To ensure the success of our school children, we implemented high standards and accountability including history standards. We believed that Virginia's students should have the fundamental knowledge and understanding of their cultural and historical heritage that serves as a foundation for preserving a free, prosperous and decent society.

I congratulate Kelly and her fellow historians on their success and wish them the best as they compete against students from across the country.●

COMMENDING MELISSA BROWN, KAITIE COCHRANE AND LINDSAY JANS ON NATIONAL HISTORY DAY

● Mr. WELLSTONE. Mr. President, today I would like to commend Melissa Brown, Kaitie Cochrane, and Lindsay Jans for their hard work, dedication, and creativity in the study of history. They have earned the admiration of their families, their community, their teacher, Huy Nguyen, and their school, Sunrise Park Middle School. These students have been selected by the National History Day program to present their performance, ''Separate But Not Equal,'' at the National Museum of American History on June 12, 2002. To be ranked by the National History Day program among the 2000 students chosen to join the national competition is an impressive honor, and to be one of only 17 groups selected from over half a million participants to present at the National Museum of American History is an incredible achievement indeed.

The National History Day Contest is the Nation's oldest and one of the most highly regarded humanities contests for students in middle and high school. The experience that Kaitie, Lindsay, and Melissa have gained through their NHD project using primary resources and participating in hands-on activities will last them for the rest of their lives. The more than 9 million students who have participated in the NHD program have gone on to careers in business, law, medicine, teaching, and countless other disciplines in which they are putting into practice the thinking and investigative approach fostered through the National History Day program. I want to thank these students for representing Minnesota along with only thirteen other States at the National Museum of American History today. The kind of leadership and perseverance Lindsay, Melissa, and Kaitie have exhibited will carry the theme of this year's National History Day Contest, ''Revolution, Reaction, and Reform in History,'' into the next generation. I wish them the best of luck both in the upcoming competition and in their future endeavors. I thank them for their hard work and their commitment to learning and sharing their knowledge with other students from across the country.●

TRIBUTE TO FRANK OLIVERI UPON HIS RETIREMENT

● Mr. SMITH of New Hampshire. Mr. President, I rise today to honor Frank Oliveri, an exemplary public official who dedicated himself to serving the people of the city of New York for three decades. As deputy director of waste water treatment, he has brought to the office the professional skills and knowledge that has made a difference in the lives of the people of the Big Apple.

Frank began his career with the Department of Environmental Protection in 1971. He is widely respected for his waste water expertise at city, state and national levels. Frank approached his work with a can-do attitude, and balanced what needs to be done with what can be done. Throughout his career, Frank accomplished a great deal for

the Department of Environmental Protection.

It is an honor and a privilege to serve Frank Oliveri in the U.S. Senate and I wish him and his family Godspeed in his retirement and in all of their future endeavors.●

THREE MICHIGAN STUDENTS HONORED FOR NATIONAL HISTORY DAY

● Mr. LEVIN. Mr. President, I would like to congratulate three Michigan students whose projects have been selected for the high honor of being presenters at the National Museum of American History on Wednesday, June 12, 2002. These three students are three of only 34 chosen to present from over 2,000 National History Day finalists. The National History Day contest annually receives more than a half million entries.

Trevor Bakker, of Holland West Middle School in Holland, MI, won for his project titled ''A Pinch of Salt: Mahatma Gandhi's Nonviolent Revolution.'' From Rochester Adams High School in Rochester Hills, MI, Allison and Rachel Brown received recognition for their project called ''Laying It On the Line: The United Automobile Workers' Struggle for Labor Reform.'' These projects reflect this year's National History Day theme, ''Revolution, Reaction, Reform in History.''

Michigan has played a critical role in revolution and reform in our country. On December 30, 1936, the newly-formed United Automobile Workers of America revolted against management with a sit-down strike in Flint to protest General Motors' decision to shift work to other factories where the union was not as strong. Three months later, the strike ended successfully with an agreement under which General Motors recognized the union as the bargaining agent of the workers, inspiring the growth of countless unions across the country.

In addition, Michigan was the home of Sojourner Truth, the great reformer for the issues of slavery and women's rights, over the last 20 years of her life. And Michigan's unique ten-cent bottle refunds, implemented in 1978 by the Beverage Container Act, represents a significant reform for the national issues of recycling and waste reduction.

These three young historians have poured months of research into this endeavor. Along the way they have sharpened their critical thinking and research skills while becoming bonafide experts on their respective topics. Their time in Washington is sure to be an enriching experience as they observe some of the richness of American history up close.

I know my Senate colleagues will join me in congratulating Trevor, Allison, and Rachel for their tremendous accomplishment, and in hoping for their continued success.●

NEW MEXICO STUDENTS' NATIONAL HISTORY DAY PROJECT

● Mr. BINGAMAN. Mr. President, today I recognize the notable work of New Mexico middle school students Elyse Burlingame, Gabrielle Sanchez, Michelle Foley-Shea, Ciara Siebuhr and Crystle Krueger on their impressive history project titled ''Margaret Sanger: Woman Rebel.'' Their project highlights the determination and important achievements of Margaret Sanger, a strong advocate for a woman's right to family planning services. The achievement of these young scholars has been recognized through the project's selection as one of the projects that will be displayed at the National Museum of American History, today, June 12, 2002. Their project was chosen out of more than half a million projects submitted by students across the nation as being an outstanding work that reflects this year's National History Day theme, ''Revolution, Reaction, Reform in History.'' Not only does the work of these students capture the story of an important figure in history, it also goes beyond the story itself and brilliantly interprets the effects Margaret Sanger had on American society in a very useful way. Their ability to go beyond their research in this way demonstrates the attributes of true scholars. Their work reflects an excellent understanding of historical context, as well as intellectual and social setting. These students also demonstrate great intellectual maturity by presenting the historical struggle of Margaret Sanger using a variety of viewpoints that allow for a better reflection of history. It is a great honor for these students, as well as for the entire state of New Mexico, to have their project displayed in the National Museum of American History in our nation's capital. I would like to congratulate Ms. Burlingame, Ms. Sanchez, Ms. Foley-Shea, Ms. Siebuhr, and Ms. Krueger on their hard work and the well deserved recognition of their project.●

10TH ANNIVERSARY OF THE NATIONAL LAW CENTER FOR INTER-AMERICAN FREE TRADE

● Mr. KYL. Mr. President, I would like to congratulate the National Law Center for Inter-American Free Trade on its 10th anniversary by having the following letter printed in the CONGRESSIONAL RECORD.

DR. BORIS KOZOLCHYK,
President and Director, National Law Center for Inter-American Free Trade, Tucson, AZ

DEAR DR. KOZOLCHYK: I would like to congratulate the National Law Center for Inter-American Free Trade on the celebration of its tenth anniversary on April 1, 2002.

The Center is an impressive research and educational institution affiliated with the James E. Rogers College of Law at the University of Arizona in Tucson. It takes excellent advantage of being near one of the most significant international borders in the world.

Since its establishment, the Center has undertaken significant work for the U.S. Department of State to harmonize commercial law in the Americas, focusing on a model law for secured transactions, uniform documentation for cross-border surface transportation, and rules for electronic commerce. This legal reform work is performed in cooperation with the Organization of American States.

The Center plays an important role in integrating U.S. business into the economies of the Western Hemisphere. Its work to reduce legal barriers to trade promotes the rule of law, democratic institutions, and enhances political stability and security in the region.

Once again, congratulations, and I wish the Center continued success.●

TRIBUTE TO TWO CALIFORNIA STUDENTS

● Mrs. BOXER. Mr. President, today I would like to honor two students from my State of California: Heidi Bowerman and Katie Olson. They have been selected to present their award winning projects at the National Museum of American History on June 12, 2002.

The Smithsonian Institution's National Museum of American History is celebrating National History Day by reflecting on this year's theme: Revolution, Reaction, Reform in History. The program asks students to research history topics of their choice related to the year's theme, and then create exhibits, performances, documentaries and papers, which they then enter in competitions at the district, State and national levels. Heidi and Katie's projects were two of seventeen projects that were selected out of more than half a million students across America.

Katie's exhibit is titled: ''Warsaw Ghetto Uprising.'' Katie attends Santa Rose High School in Santa Rosa, CA, and her teachers were Will Dunn and Whitney Olson.

Heidi's performance is titled: ''Aristocracy to Communism: The Revolution that Reformed a Nation.'' Heidi attends Alta Sierra Intermediate School in Clovis, CA, and her teachers were Carole Smoot and Linda Linder.

I am so proud to have two accomplished young women representing the State of California in receiving this impressive award. Their achievements, along with the other student award winners, should serve as an inspiration to all students.●

RECOGNIZING KATHY SHORTT

● Mr. ALLEN. Mr. President, I rise today to recognize Kathy Shortt, a teacher at Lebanon High School in Lebanon, VA, who is one of eight finalists for the Richard T. Farrell Teacher of Merit Award for outstanding success in teaching history.

The Richard T. Farrell Award is presented each year to a teacher who employs innovative teaching methods in and out of the classroom. The teacher must participate in the National History Day program, develop and use creative teaching methods that interest students in history and help them

make exciting discoveries about the past, and show exemplary commitment to helping students develop their interests in history and recognizing their achievements.

Ms. Shortt is being recognized for her dedication to the National History Day program and her success at improving history education. She has been involved in helping students participate in National History Day for 21 years and has presented at numerous workshops and acted as a mentor for other teachers for much of her career. She continues to have an impact on students even after they have left her classroom.

During my term as Governor of Virginia, we recognized that there are fundamental academic basics that our children must learn if they are to be capable, responsible, and contributing citizens, and able to compete and succeed in the future. To ensure the success of our school children, we implemented high standards and accountability including history standards. We believed that Virginia's students should have the fundamental knowledge and understanding of their cultural and historical heritage that serves as a foundation for preserving a free, prosperous and decent society.

I commend Kathy on her selection for this award and applaud her dedication to her students and the improvement of the educational process. With dedicated teachers like Kathy Shortt, I know the students in Virginia and indeed, across America have a bright future.●

TRIBUTE TO SARA MOSS

● Mr. LIEBERMAN. Mr. President, I rise today to congratulate Sara Moss for being honored by the New York Lawyers' Division of the Anti-Defamation League for her strong commitment to public service and an exemplary dedication to human relations.

The mission of Anti-Defamation League is to expose and combat the purveyors of hatred in our midst, responding to whatever new challenges may arise. The Human Relations Award is presented to an individual who has demonstrated distinguished service, outstanding leadership and a personification of the highest ideals of our democratic society.

Ms. Moss possesses all of these qualities and more. One need only look at the many examples in her life to be convinced. In addition to maintaining a successful career as Senior Vice President and General Counsel of Pitney Bowes, she has continued to demonstrate a strong commitment to public service and pro bono work, especially when involving issues related to women and minorities. In particular, Ms. Moss has used her position with Pitney Bowes to provide legal counsel to a wide variety of service organizations, including a social service agency, a women's learning center, a nonprofit day care provider, a sexual assault crisis center, and a substance abuse and rehabilitation center. She has received many awards for her service, including the Minority Corporate Council Diversity Award and the Pro Bono Partnership Outstanding Contribution Award.

Ms. Moss is a fine example of the embodiment of our living democratic ideals, and I congratulate her on receiving this distinguished recognition of her contribution to improving human relations. I wish her continued success in her commitment to public service and hope that her example will demonstrate the importance of active civic involvement on the behalf of our communities.●

2001 NATIONAL MEDAL OF TECHNOLOGY LAUREATES

● Mr. CORZINE. Mr. President, I rise today to honor the 2001 National Medal of Technology Laureates, Dr. Arun N. Netravali of Murray Hill, NJ and Dr. Sidney Pestka of Piscataway, NJ.

Dr. Arun Netravali is a leader in the field of communications systems. As the chief scientist of Lucent Technologies and past president of Bell Labs, he is being cited for his pioneering contributions that transformed television from analog to digital. His innovative algorithms have enabled the switch from analog to digital in numerous services, including broadcast television, CATV, DBS, and HDTV. Furthermore, his work has facilitated an entirely new set of products and services for the multimedia revolution over the Internet. Important communication services such as video conferencing and streaming over the Internet could not be done economically without Dr. Netravali's compression algorithms. He has also been singled out for this prestigious honor for his leadership. During his tenure, Dr. Netravali created, inspired and motivated teams to innovate, keeping Bell Labs at the forefront of revolutionary developments in technology.

I would also like to recognize Dr. Sidney Pestka for his groundbreaking achievements that led to the development of the biotechnology industry. During his career, Dr. Pestka has made a remarkable series of discoveries and developments, often bucking prevailing beliefs and designing innovative solutions to problems along the way to success. His efforts have led to the development of the first recombinant interferons for the treatment of many viral diseases, cancers, and multiple sclerosis. Creating the foundation for more than 100 U.S. and foreign patents, Dr. Pestka's work prepared the pathway for the development of many other biotherapeutic agents now used and stimulated the development of today's extensive biotechnology industry. He has fostered new industries in multiple area, developed new medicines for previously untreatable diseases, and brought new hope to those afflicted. Indeed, his achievements in innovation and translation provide a role model for this and future generations.

These two New Jerseyans embody the spirit of American innovation and have advanced our nation's global competitiveness and standard of living. Their groundbreaking contributions have commercialized technologies, created jobs, improved productivity and stimulated the nation's growth and development. I commend them for their remarkable achievements and am honored to bring them to your attention.●

MESSAGE FROM THE HOUSE

At 1:44 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, without amendment.

S. 2431. An act to amend the Omnibus Crime Control and Safe Streets Act of 1968 to ensure that chaplains killed in the line of duty receive public safety officer death benefits.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2054. An act to give the consent of Congress to an agreement or compact between Utah and Nevada regarding a change in the boundaries of those States, and for other purposes.

H.R. 2068. An act to revise, codify, and enact without substantive change certain general and permanent laws, related to public buildings, property, and works, as title 40, United States Code, ''Public Buildings, Property, and Works.''

H.R. 2621. An act to amend title 18, United States Code, with respect to consumer product protection.

H.R. 2880. An act to amend laws relating to the lands of the enrollees and lineal descendants of enrollees whose names appear on the final Indian rolls of the Muscogee (Creek), Seminole, Cherokee, Chickasaw, and Choctaw Nations (historically referred to as the Five Civilized Tribes), and for other purposes.

H.R. 3738. An act to designate the facility of the United States Postal Service located at 1299 North 7th Street in Philadelphia, Pennsylvania, as the ''Herbert Arlene Post Office Building.''

H.R. 3739. An act to designate the facility of the United States Postal Service located at 6150 North Broad Street in Philadelphia, Pennsylvania, as the ''Rev. Leon Sullivan Post Office Building.''

H.R. 3740. An act to designate the facility of the United States Postal Service located at 925 Dickinson Street in Philadelphia, Pennsylvania, as the ''William V. Cibotti Post Office Building.''

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 213. Concurrent resolution expressing the sense of the Congress regarding North Korean refugees who are detained in China and returned to North Korea where they face torture, imprisonment, and execution.

H. Con. Res. 394. Concurrent resolution expressing the sense of the Congress concerning the 2002 World Cup and co-hosts Republic of Korea and Japan.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 2054. An act to give the consent of Congress to an agreement or compact between Utah and Nevada regarding a change in the boundaries of those States, and for other purposes; to the Committee on the Judiciary.

H.R. 2068. An act to revise, codify, and enact without substantive change certain general and permanent laws, related to public buildings, property, and works, as title 40, United States Code, ''Public Buildings, Property, and Works''; to the Committee on the Judiciary.

H.R. 2880. An act to amend laws relating to the lands of the citizens of the Muscogee (Creek), Seminole, Cherokee, Chickasaw Nations, historically referred to as the Five Civilized Tribes, and other purposes; to the Committee on Indian Affairs.

H.R. 3738. An act to designate the facility of the United States Postal Service located at 1299 North 7th Street in Philadelphia, Pennsylvania, as the ''Herbert Arlene Post Office Building''; to the Committee on Government Affairs.

H.R. 3739. An act to designate the facility of the United States Postal Service located at 6150 North Broad Street in Philadelphia, Pennsylvania, as the ''Rev. Leon Sullivan Post Office Building''; to the Committee on Governmental Affairs.

H.R. 3740. An act to designate the facility of the United States Postal Service located at 925 Dickinson Street in Philadelphia, Pennsylvania, as the ''William V. Cibotti Post Office Building''; to the Committee on Governmental Affairs.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 213. Concurrent resolution expressing the sense of the Congress regarding North Korean refugees who are detained in China and returned to North Korea where they face torture, imprisonment, and execution; to the Committee on Foreign Relations.

H. Con. Res. 394. Concurrent resolution expressing the sense of the Congress concerning the 2002 World Cup and co-hosts Republic of Korea and Japan; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2621. An act to amend title 18, United States Code, with respect to consumer product protection.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. BIDEN, from the Committee on Foreign Relations:

Treaty Doc. 106–37(B) Optional Protocol No. 2 to Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Exec. Rept. No. 107–4)

Text of the Committee-Recommended Resolution of Advice and Consent

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. ADVICE AND CONSENT TO RATIFICATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION, AND CHILD PORNOGRAPHY, SUBJECT TO A RESERVATION, UNDERSTANDINGS, A DECLARATION, AND A CONDITION.

The Senate advises and consents to the ratification of the Optional Protocol Relating to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, opened for signature at New York on May 25, 2000 (Treaty Doc. 106–37; in this resolution referred to as the ''Protocol''), subject to the reservation in section 2, the understandings in section 3, the declaration in section 4, and the condition in section 5.

SEC. 2. RESERVATION.

The advice and consent of the Senate under section 1 is subject to the reservation, which shall be included in the United States instrument of ratification of the Protocol, that, to the extent that the domestic law of the United States does not provide for jurisdiction over an offense described in Article 3(1) of the Protocol if the offense is committed on board a ship or aircraft registered in the United States, the obligation with respect to jurisdiction over that offense shall not apply to the United States until such time as the United States may notify the Secretary-General of the United Nations that United States domestic law is in full conformity with the requirements of Article 4(1) of the Protocol.

SEC. 3. UNDERSTANDINGS.

The advice and consent of the Senate under section 1 is subject to the following understandings, which shall be included in the United States instrument of ratification of the Protocol:

(1) NO ASSUMPTION OF OBLIGATIONS UNDER CONVENTION ON THE RIGHTS OF THE CHILD.—The United States understands that the United States assumes no obligations under the Convention on the Rights of the Child by becoming a party to the Protocol.

(2) THE TERM ''SALE OF CHILDREN''.—The United States understands that the term ''sale of children'', as defined in Article 2(a) of the Protocol, is intended to cover any transaction in which remuneration or other consideration is given and received under circumstances in which a person who does not have a lawful right to custody of the child thereby obtains de facto control over the child.

(3) THE TERM ''CHILD PORNOGRAPHY''.—The United States understands the term ''child pornography'', as defined in Article 2(c) of the Protocol, to mean the visual representation of a child engaged in real or simulated sexual activities or of the genitalia of a child where the dominant characteristic is depiction for a sexual purpose.

(4) THE TERM ''TRANSFER OF ORGANS FOR PROFIT''.—The United States understands that—

(A) the term ''transfer of organs for profit'', as used in Article 3(1)(a)(i) of the Protocol, does not cover any situation in which a child donates an organ pursuant to lawful consent; and

(B) the term ''profit'', as used in Article 3(1)(a)(i) of the Protocol, does not include the lawful payment of a reasonable amount associated with the transfer of organs, including any payment for the expense of travel, housing, lost wages, or medical costs.

(5) THE TERMS ''APPLICABLE INTERNATIONAL LEGAL INSTRUMENTS'' AND ''IMPROPERLY INDUCING CONSENT''.—

(A) UNDERSTANDING OF ''APPLICABLE INTERNATIONAL LEGAL INSTRUMENTS''.—The United States understands that the term ''applicable international legal instruments'' in Articles 3(1)(a)(ii) and 3(5) of the Protocol refers to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993 (in this paragraph referred to as ''The Hague Convention'').

(B) NO OBLIGATION TO TAKE CERTAIN ACTION.—The United States is not a party to The Hague Convention, but expects to become a party. Accordingly, until such time as the United States becomes a party to The Hague Convention, it understands that it is not obligated to criminalize conduct proscribed by Article 3(1)(a)(ii) of the Protocol or to take all appropriate legal and administrative measures required by Article 3(5) of the Protocol.

(C) UNDERSTANDING OF ''IMPROPERLY INDUCING CONSENT''.—The United States understands that the term ''improperly inducing consent'' in Article 3(1)(a)(ii) of the Protocol means knowingly and willfully inducing consent by offering or giving compensation for the relinquishment of parental rights.

(6) IMPLEMENTATION OF THE PROTOCOL IN THE FEDERAL SYSTEM OF THE UNITED STATES.—The United States understands that the Protocol shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the State and local governments. To the extent that State and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of the Protocol.

SEC. 4. DECLARATION.

The advice and consent of the Senate under section 1 is subject to the declaration that:

(1)(A) the provisions of the Protocol (other than Article 5) are non-self-executing; and

(B) the United States will implement Article 5 of the Protocol pursuant to chapter 209 of title 18, United States Code; and

(2) except as described in the reservation in section 2——

(A) current United States law, including the laws of the States of the United States, fulfills the obligations of the Protocol for the United States; and

(B) accordingly, the United States does not intend to enact new legislation to fulfill its obligations under the Protocol.

SEC. 5. CONDITION.

The advice and consent of the Senate under section 1 is subject to the condition that the Senate reaffirms condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990 (adopted at Vienna on May 31, 1996), approved by the Senate on May 14, 1997 (relating to condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988).

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Treaty Doc. 106–37(A) Optional Protocol No. 1 to Convention on Rights of the Child on Involvement of Children in Armed Conflict (Exec. Rept. No. 107–4)

TEXT OF THE COMMITTEE-RECOMMENDED RESOLUTION OF ADVICE AND CONSENT

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. ADVICE AND CONSENT TO RATIFICATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT, SUBJECT TO UNDERSTANDINGS AND CONDITIONS.

The Senate advises and consents to the ratification of the Optional Protocol to the

Convention on the Rights of the Child on the Involvement of Children In Armed Conflict, opened for signature at New York on May 25, 2000 (Treaty Doc. 106–37; in this resolution referred to as the ''Protocol''), subject to the understandings in section 2 and the conditions in section 3.

SEC. 2. UNDERSTANDINGS.

The advice and consent of the Senate under section 1 is subject to the following understandings, which shall be included in the United States instrument of ratification of the Protocol:

(1) NO ASSUMPTION OF OBLIGATIONS UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD.—The United States understands that the United States assumes no obligations under the Convention on the Rights of the Child by becoming a party to the Protocol.

(2) IMPLEMENTATION OF OBLIGATION NOT TO PERMIT CHILDREN TO TAKE DIRECT PART IN HOSTILITIES.—The United States understands that, with respect to Article 1 of the Protocol—

(A) the term ''feasible measures'' means those measures that are practical or practically possible, taking into account all the circumstances ruling at the time, including humanitarian and military considerations;

(B) the phrase ''direct part in hostilities''—

(i) means immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy; and

(ii) does not mean indirect participation in hostilities, such as gathering and transmitting military information, transporting weapons, munitions, or other supplies, or forward deployment; and

(C) any decision by any military commander, military personnel, or other person responsible for planning, authorizing, or executing military action, including the assignment of military personnel, shall only be judged on the basis of all the relevant circumstances and on the basis of that person's assessment of the information reasonably available to the person at the time the person planned, authorized, or executed the action under review, and shall not be judged on the basis of information that comes to light after the action under review was taken.

(3) MINIMUM AGE FOR VOLUNTARY RECRUITMENT.—The United States understands that Article 3 of the Protocol obligates States Parties to the Protocol to raise the minimum age for voluntary recruitment into their national armed forces from the current international standard of 15 years of age.

(4) ARMED GROUPS.—The United States understands that the term ''armed groups'' in Article 4 of the Protocol means nongovernmental armed groups such as rebel groups, dissident armed forces, and other insurgent groups.

(5) NO BASIS FOR JURISDICTION BY ANY INTERNATIONAL TRIBUNAL.—The United States understands that nothing in the Protocol establishes a basis for jurisdiction by any international tribunal, including the International Criminal Court.

SEC. 3. CONDITIONS.

The advice and consent of the Senate under section 1 is subject to the following conditions:

(1) REQUIREMENT TO DEPOSIT DECLARATION.—The President shall, upon ratification of the Protocol, deposit a binding declaration under Article 3(2) of the Protocol that states in substance that—

(A) the minimum age at which the United States permits voluntary recruitment into the Armed Forces of the United States is 17 years of age;

(B) the United States has established safeguards to ensure that such recruitment is not forced or coerced, including a requirement in section 505(a) of title 10, United States Code, that no person under 18 years of age may be originally enlisted in the Armed Forces of the United States without the written consent of the person's parent or guardian, if the parent or guardian is entitled to the person's custody and control;

(C) each person recruited into the Armed Forces of the United States receives a comprehensive briefing and must sign an enlistment contract that, taken together, specify the duties involved in military service; and

(D) all persons recruited into the Armed Forces of the United States must provide reliable proof of age before their entry into military service.

(2) INTERPRETATION OF THE PROTOCOL.—The Senate reaffirms condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990 (adopted at Vienna on May 31, 1996), approved by the Senate on May 14, 1997 (relating to condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988).

(3) REPORTS.—

(A) INITIAL REPORT.—Not later than 90 days after the deposit of the United States instrument of ratification, the Secretary of Defense shall submit to the Committee on Foreign Relations and the Committee on Armed Services of the Senate a report describing the measures taken by the military departments to comply with the obligation set forth in Article 1 of the Protocol. The report shall include the text of any applicable regulations, directives, or memoranda governing the policies of the departments in implementing that obligation.

(B) SUBSEQUENT REPORTS.—

(i) REPORT BY THE SECRETARY OF STATE.—The Secretary of State shall submit to the Committee on Foreign Relations and the Committee on Armed Services of the Senate a copy of any report submitted to the Committee on the Rights of the Child pursuant to Article 8 of the Protocol.

(ii) REPORT BY THE SECRETARY OF DEFENSE.—Not later than 30 days after any significant change in the policies of the military departments in implementing the obligation set forth in Article 1 of the Protocol, the Secretary of Defense shall submit a report to the Committee on Foreign Relations and the Committee on Armed Services of the Senate describing the change and the rationale therefor.

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. LIEBERMAN (for himself and Mr. MILLER):

S. 2613. A bill to amend section 507 of the Omnibus Parks and Public Lands Management Act of 1996 to authorize additional appropriations for historically black colleges and universities, to decrease the cost-sharing requirement relating to the additional appropriations, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. CORZINE:

S. 2614. A bill to amend title XVIII of the Social Security Act to reduce the work hours and increase the supervision of resident physicians to ensure the safety of patients and resident physicians themselves; to the Committee on Finance.

By Mr. MURKOWSKI (for himself and Mr. WELLSTONE):

S. 2615. A bill to amend title XVII of the Social Security Act to provide for improvements in access to services in rural hospitals and critical access hospitals; to the Committee on Finance.

By Mr. THURMOND:

S. 2616. A bill to amend the Public Health Service Act to establish an Office of Men's Health; to the Committee on Health, Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. GRAHAM (for himself, Mr. DEWINE, Mr. MCCAIN, Mr. TORRICELLI, Mr. MILLER, Mr. LEAHY, Mr. FEINGOLD, Mr. DODD, Mr. NELSON of Florida, Mr. GRASSLEY, Mr. BREAUX, Mr. WARNER, Mr. NELSON of Nebraska, Mr. COCHRAN, Mr. HELMS, Mr. CHAFEE, Mr. REID, Mr. ROCKEFELLER, Mr. BAYH, Mr. LUGAR, Mr. BROWNBACK, Mr. ALLEN, and Mr. SESSIONS):

S. Res. 283. A resolution recognizing the successful completion of democratic elections in the Republic of Colombia; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 1339

At the request of Mr. CAMPBELL, the names of the Senator from New York (Mrs. CLINTON) and the Senator from Alaska (Mr. MURKOWSKI) were added as cosponsors of S. 1339, a bill to amend the Bring Them Home Alive Act of 2000 to provide an asylum program with regard to American Persian Gulf War POW/MIAs, and for other purposes.

S. 1746

At the request of Mr. REID, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 1746, a bill to amend the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974 to strengthen security at sensitive nuclear facilities.

S. 1785

At the request of Mr. CLELAND, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 1785, a bill to urge the President to establish the White House Commission on National Military Appreciation Month, and for other purposes.

S. 1931

At the request of Mr. LIEBERMAN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 1931, a bill to amend title XVIII of the Social Security Act to improve patient access to, and utilization of, the colorectal cancer screening benefit under the medicare program.

S. 2070

At the request of Mr. BINGAMAN, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 2070, a bill to amend part A of title IV to exclude child care from the determination of the 5-year limit on assistance under the temporary assistance to needy families program, and for other purposes.

S. 2085

At the request of Mr. CLELAND, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 2085, a bill to amend title XVIII of the Social Security Act to clarify the definition of homebound with respect to home health services under the medicare program.

S. 2108

At the request of Ms. STABENOW, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2108, a bill to amend the Agriculture and Consumer Protection Act of 1973 to assist the neediest of senior citizens by modifying the eligibility criteria for supplemental foods provided under the commodity supplemental food program to take into account the extraordinarily high out-of-pocket medical expenses that senior citizens pay, and for other purposes.

S. 2233

At the request of Mr. THOMAS, the names of the Senator from North Dakota (Mr. CONRAD), the Senator from Massachusetts (Mr. KERRY), and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 2233, a bill to amend title XVIII of the Social Security Act to establish a medicare subvention demonstration project for veterans.

S. 2425

At the request of Mr. BAYH, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2425, a bill to prohibit United States assistance and commercial arms exports to countries and entities supporting international terrorism.

S. 2458

At the request of Mrs. HUTCHISON, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 2458, a bill to enhance United States diplomacy, and for other purposes.

S. 2489

At the request of Mrs. CLINTON, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 2489, a bill to amend the Public Health Service Act to establish a program to assist family caregivers in accessing affordable and high-quality respite care, and for other purposes.

S. 2548

At the request of Mr. BINGAMAN, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 2548, a bill to amend the temporary assistance to needy families program under part A of title IV of the Social Security Act to improve the provision of education and job training under that program, and for other purposes.

S. 2560

At the request of Mr. ALLARD, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2560, a bill to provide for a multi-agency cooperative effort to encourage further research regarding the causes of chronic wasting disease and methods to control the further spread of the disease in deer and elk herds, to monitor the incidence of the disease, to support State efforts to control the disease, and for other purposes.

S. 2572

At the request of Mr. KERRY, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2572, a bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes.

S. 2573

At the request of Mr. REED, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2573, a bill to amend the McKinney-Vento Homeless Assistance Act to reauthorize the Act, and for other purposes.

S. 2600

At the request of Mr. DODD, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 2600, a bill to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

S. 2608

At the request of Mr. GREGG, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2608, a bill to amend the Coastal Zone Management Act of 1972 to authorize the acquisition of coastal areas in order better to ensure their protection from conversion or development.

S. 2611

At the request of Mr. REED, the names of the Senator from New York (Mrs. CLINTON), the Senator from South Dakota (Mr. DASCHLE), and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 2611, a bill to reauthorize the Museum and Library Services Act, and for other purposes.

S.J. RES. 37

At the request of Mr. WELLSTONE, the names of the Senator from New Jersey (Mr. CORZINE) and the Senator from New Jersey (Mr. TORRICELLI) were added as cosponsors of S. J. Res. 37, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by Centers for Medicare & Medicaid Services within the Department of Health and Human Services relating to modification of the medicaid upper payment limit for non-State government owned or operated hospitals published in the Federal Register on January 18, 2002. and submitted to the Senate on March 15, 2002.

S. RES. 266

At the request of Mr. ROBERTS, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. Res. 266, a resolution designating October 10, 2002, as ''Put the Brakes on Fatalities Day.''

S. CON. RES. 3

At the request of Mr. FEINGOLD, the names of the Senator from Colorado (Mr. CAMPBELL) and the Senator from Kansas (Mr. ROBERTS) were added as cosponsors of S. Con. Res. 3, a concurrent resolution expressing the sense of Congress that a commemorative postage stamp should be issued in honor of the U.S.S. *Wisconsin* and all those who served aboard her.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LIEBERMAN (for himself and Mr. MILLER):

S. 2613. A bill to amend section 507 of the Omnibus Parks and Public Lands Management Act of 1996 to authorize additional appropriations for historically black colleges and universities, to decrease the cost-sharing requirement relating to the additional appropriations, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. LIEBERMAN. Mr. President, on behalf of myself and Senator MILLER, I am submitting legislation that is designed to facilitate historic preservation activities at historically black colleges and universities. Specifically, this legislation would amend section 507 of the Omnibus Parks and Public Lands Management Act of 1996 to decrease the cost-sharing requirement for those seeking Federal funds for historic preservation activities at historically black colleges and universities. I am proud to say that the legislation I am submitting today is a companion bill to H.R. 1606, submitted by Congressman JAMES CLYBURN of South Carolina.

American history has been a constant, if not always consistent, march toward an ideal. That ideal is equal opportunity for all.

In every generation, it's taken the work of pioneers to open the gates of the American community to people who had previously been excluded. Pioneers have stepped forward when others would not to defiantly state, in effect, that we as a Nation will not be defined by surface characteristics. We will look deeper and try harder. The pioneers have held us to our national promise, and reminded us that America and Americanism are not about where you came from, what language you speak, what religion you practice, or what you look like, but about belief in basic ideals of responsibility, opportunity and community.

Historically Black Colleges and Universities have been such pioneers for generations, and they continue today to help America become its best self.

Today, America has 103 historically black colleges and universities in twenty-two States and the Virgin Islands, which educate about 300,000 undergraduate students and thousands of graduate, professional and doctoral students. In fact, 8 of the top 10 producers of African-American engineers are HBCUs. 42 percent of all the PhDs earned each year by African-Americans are earned by graduates of HBCUs.

Despite playing such a central role in our economy, society, and culture, HBCUs have been physically eroding for years. In 1998, the National Trust for Historic Preservation reported that most of the HBCUs in the United States are showing serious signs of neglect. The Trust said that campus landmarks are decaying and college grounds are badly in need of attention. And a 1998 General Accounting Office report estimated that in HBCUs nationwide, there were more than 700 historic buildings in states of disrepair.

That's why I am proudly sponsoring Representative CLYBURN's bill to provide more restoration funding for historic sites at Historically Black Colleges and Universities throughout the Nation.

These beautiful, architecturally significant structures are in most cases over a hundred years old, and were often built using the help of the students themselves. Their architectural beauty is a sign of something deeper, the fact that they have served as critical portals of opportunity for African-Americans throughout our history. That's why they deserve our strong protection and sensitive preservation.

I saw this firsthand. When I visited Allen University in South Carolina in April of this year, I went to Arnett Hall, a building that had been transformed from an eyesore into a beautiful and stately facility with the help of Federal funds, thanks to Representative CLYBURN. In the past, students and faculty would walk into the hall and get the message that we as a Nation were neglecting these historic treasures. Now, they absorb the message that we consider historically black colleges and universities central to our history and to our future.

Thanks in no small part to these institutions, the overarching history of African-Americans in this country has been not a tragedy, as it once was, but a brilliant movement toward dignity, inclusion, freedom, and opportunity. That's the right message for African-Americans and all Americans.

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. 2613

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

SECTION 1. DECREASED MATCHING REQUIREMENT; AUTHORIZATION OF APPROPRIATIONS.

(a) DECREASED MATCHING REQUIREMENT.—Section 507(c) of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 470a note) is amended—

(1) by striking ''(1) Except'' and inserting the following:

''(1) IN GENERAL.—Except'';

(2) by striking ''paragraph (2)'' and inserting ''paragraphs (2) and (3)'';

(3) by striking ''(2) The Secretary'' and inserting the following:

''(2) WAIVER.—The Secretary'';

(4) by striking ''paragraph (1)'' and inserting ''paragraphs (1) and (3)''; and

(5) by adding at the end the following new paragraph:

''(3) EXCEPTION.—The Secretary may obligate funds made available under subsection (d)(2) for a grant with respect to a building or structure listed on, or eligible for listing on, the National Register of Historic Places only if the grantee agrees to provide, from funds derived from non-Federal sources, an amount that is equal to 30 percent of the total cost of the project for which the grant is provided.''.

(b) AUTHORIZATION OF APPROPRIATION.—Section 507(d) of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 470a note) is amended—

(1) by striking ''Pursuant to'' and inserting the following:

''(1) 1996 AUTHORIZATION.—Pursuant to''; and

(2) by adding at the end the following new paragraph:

''(2) ADDITIONAL AUTHORIZATION.—In addition to amounts made available under paragraph (1), pursuant to section 108 of the National Historic Preservation Act, there are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.''.

By Mr. CORZINE:

S. 2614. A bill to amend title XVIII of the Social Security Act to reduce the work hours and increase the supervision of resident physicians to ensure the safety of patients and resident physicians themselves; to the Committee on Finance.

Mr. CORZINE. Mr. President, I rise today to introduce legislation, the Patient and Physician Safety and Protection Act of 2002, to limit medical resident work hours to 80 hours a week and to provide real protections for patients and resident physicians who are negatively affected by excessive work hours. This is a companion bill to legislation introduced in the House of Representatives by Representative JOHN CONYERS.

It is very troubling that hospitals across the Nation are requiring young doctors to work 36 hour shifts and as many as 120 hours a week in order to complete their residency programs. These long hours lead to a deterioration of cognitive function similar to the effects of blood alcohol levels of 0.1 percent. This is a level of cognitive impairment that would make these doctors unsafe to drive, yet these physicians are not only allowed but in fact are required to care for patients and perform procedures on patients under these conditions.

While the medical community has been aware of this problem for many years, the issue has largely been pushed under the rug. Only recently has the medical community taken a more serious look at the problem. In the last couple of months, my office has worked with the Association of American Medical Colleges and teaching hospitals in New Jersey and New York to address this problem and to try to find a workable solution.

As a result of these efforts and increased public pressure on the medical community to address this quality of care and labor issue, the Accreditation Council for Graduate Medical Education, ACGME, announced today new work hour recommendations. This is an important first step. But while some of their recommendations are commendable, they would still require residents to work in excess of 80 hours a week and 30-hour shifts. I look forward to working with the Council to adapt strong standards that are not only recommendations, but are enforceable requirements that truly protect patients and residents.

Today, I am introducing legislation that not only recognizes the problem of excessive work hours, but also creates strong enforcement mechanisms. The bill also provides funding support to teaching hospitals to implement new work hour standards. Without enforcement and financial support, efforts to reduce work hours are not likely to be successful.

Let me again emphasize that the Patient and Physician Safety and Protection Act of 2002 will limit medical resident work hours to 80 hours a week. Not 40 hours or 60 hours. 80 hours a week. It is hard to argue that this standard is excessively strict. In fact, it is unconscionable that we now have resident physicians, or any physicians for that matter, caring for very sick patients 120 hours a week and 36 hours straight with fewer than 10 hours between shifts. This is an outrageous violation of a patient's right to quality care. And, for many patients, it is literally a matter of life and death.

In addition to limiting work hours to 80 hours week, my bill limits the length of any one shift to 24 consecutive hours and limits the length of an emergency room shift to 12 hours. The bill also ensures that residents have at least one out of seven days off and ''on-call'' shifts no more often than every third night.

Finally, my legislation provides meaningful enforcement mechanisms that will protect the identity of resident physicians who file complaints about work hour violations. The guidelines that the ACGME released today do not contain any whistleblower protections for residents that seek to report program violations. Without this important protection, residents will be reluctant to report these violations, which in turn will weaken enforcement.

My legislation also makes compliance with these work hour requirements a condition of Medicare participation. Each year, Congress provides $8 billion to teaching hospitals to train new physicians. While Congress must continue to vigorously support adequate funding so that teaching hospitals are able to carryout this important public service, these hospitals must also make a commitment to ensuring safe work conditions for these physicians and providing the highest quality of care to the patients they treat.

In closing I would like to read a quote from an Orthopedic Surgery

Resident from Northern California, which I think illustrates why we need this legislation:

I was operating post-call after being up for over 36 hours and was holding retractors. I literally fell asleep standing up and nearly face-planted into the wound. My upper arm hit the side of the gurney, and I caught myself before I fell to the floor. I nearly put my face in the open wound, which would have contaminated the entire field and could have resulted in an infection for the patient.

This is a very serious problem that must be addressed before medical errors like this occur. I hope every member of the Senate will consider this legislation and the potential it has to reduce medical errors, improve patient care, and create a safer working environment for the backbone of our Nation's healthcare system.

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. 2614

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 ''Patient and Physician Safety and Protection Act of 2002''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Federal Government, through the medicare program, pays approximately $8,000,000,000 per year solely to train resident-physicians in the United States, and as a result, has an interest in assuring the safety of patients treated by resident-physicians and the safety of resident-physicians themselves.

(2) Resident-physicians spend a significant amount of their time performing activities not related to the educational mission of training competent physicians.

(3) The excessive numbers of hours worked by resident-physicians is inherently dangerous for patient care and for the lives of resident-physicians.

(4) The scientific literature has consistently demonstrated that the sleep deprivation of the magnitude seen in residency training programs leads to cognitive impairment.

(5) A substantial body of research indicates that excessive hours worked by resident-physicians lead to higher rates of medical error, motor vehicle accidents, depression, and pregnancy complications.

(6) The medical community has not adequately addressed the issue of excessive resident-physician work hours.

(7) Different medical specialty training programs have different patient care considerations but the effects of sleep deprivation on resident-physicians does not change between specialties.

(8) The Federal Government has regulated the work hours of other industries when the safety of employees or the public is at risk.

SEC. 3. REVISION OF MEDICARE HOSPITAL CONDITIONS OF PARTICIPATION REGARDING WORKING HOURS OF RESIDENTS.

(a) IN GENERAL.—Section 1866 of the Social Security Act (42 U.S.C. 1395cc) is amended—

(1) in subsection (a)(1)—

(A) by striking ''and'' at the end of subparagraph (R);

(B) by striking the period at the end of subparagraph (S) and inserting '', and''; and

(C) by inserting after subparagraph (S) the following new subparagraph:

''(T) in the case of a hospital that uses the services of physician residents or postgraduate trainees, to meet the requirements of subsection (j).''; and

(2) by adding at the end the following new subsection:

''(j)(1)(A) In order that the working conditions and working hours of physicians and postgraduate trainees promote the provision of quality medical care in hospitals, as a condition of participation under this title each hospital shall establish the following limits on working hours for certain members of the medical staff and postgraduate trainees:

''(i) Subject to subparagraph (C), postgraduate trainees may work no more than a total of 80 hours per week and 24 hours per shift.

''(ii) Subject to subparagraph (C), postgraduate trainees—

''(I) shall have at least 10 hours between scheduled shifts;

''(II) shall have at least 1 full day out of every 7 days off and 1 full weekend off per month;

''(III) who are assigned to patient care responsibilities in an emergency department shall work no more than 12 continuous hours in that department; and

''(IV) shall not be scheduled to be on call in the hospital more often than every third night.

''(B) The Secretary shall promulgate such regulations as may be necessary to ensure quality of care is maintained during the transfer of direct patient care from 1 postgraduate trainee to another at the end of each such 24-hour period referred to in subparagraph (A) and shall take into account cases of individual patient emergencies.

''(C) The work hour limitations under subparagraph (A) and requirements of subparagraph (B) shall not apply to a hospital during a state of emergency declared by the Secretary that applies with respect to that hospital.

''(2) The Secretary shall promulgate such regulations as may be necessary to monitor and supervise postgraduate trainees assigned patient care responsibilities as part of an approved medical training program, as well as to assure quality patient care.

''(3) Each hospital shall inform postgraduate trainees of—

''(A) their rights under this subsection, including methods to enforce such rights (including so-called whistle-blower protections); and

''(B) the effects of their acute and chronic sleep deprivation both on themselves and on their patients.

''(4) For purposes of this subsection, the term 'postgraduate trainee' includes a postgraduate intern, resident, or fellow.''.

(b) DESIGNATION.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall designate an individual within the Department of Health and Human Services to handle all complaints of violations that arise from residents who report that their programs are in violation of the requirements of section 1866(j) of the Social Security Act (as added by subsection (a)).

(2) GRIEVANCE RIGHTS.—A postgraduate trainee or physician resident may file a complaint with the Secretary of Health and Human Services concerning a violation of such requirements. Such a complaint may be filed anonymously. The Secretary may conduct an investigation and take such corrective action with respect to such a violation.

(3) CIVIL MONEY PENALTY ENFORCEMENT.—Any hospital that violates such requirement is subject to a civil money penalty not to exceed $100,000 for each resident training program in any 6-month period. The provisions of section 1128A of the Social Security Act (other than subsections (a) and (b)) shall apply to civil money penalties under this paragraph in the same manner as they apply to a penalty or proceeding under section 1128A(a) of such Act.

(4) DISCLOSURE OF VIOLATIONS AND ANNUAL REPORTS.—The individual designated under paragraph (1) shall—

(A) provide for annual anonymous surveys of postgraduate trainees to determine compliance with such requirements and for the disclosure of the results of such surveys to the public on a residency-program specific basis;

(B) based on such surveys, conduct appropriate on-site investigations;

(C) provide for disclosure to the public of violations of and compliance with, on a hospital and residence-program specific basis, such requirements; and

(D) make an annual report to Congress on the compliance of hospitals with such requirements, including providing a list of hospitals found to be in violation of such requirements.

(c) WHISTLEBLOWER PROTECTIONS.—

(1) IN GENERAL.—A hospital covered by the requirements of section 1866(j)(1) of the Social Security Act (as added by subsection (a)) shall not penalize, discriminate, or retaliate in any manner against an employee with respect to compensation, terms, conditions, or privileges of employment, who in good faith (as defined in paragraph (2)), individually or in conjunction with another person or persons—

(A) reports a violation or suspected violation of such requirements to a public regulatory agency, a private accreditation body, or management personnel of the hospital;

(B) initiates, cooperates or otherwise participates in an investigation or proceeding brought by a regulatory agency or private accreditation body concerning matters covered by such requirements;

(C) informs or discusses with other employees, with a representative of the employees, with patients or patient representatives, or with the public, violations or suspected violations of such requirements; or

(D) otherwise avails himself or herself of the rights set forth in such section or this subsection.

(2) GOOD FAITH DEFINED.—For purposes of this subsection, an employee is deemed to act ''in good faith'' if the employee reasonably believes—

(A) that the information reported or disclosed is true; and

(B) that a violation has occurred or may occur.

(d) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first July 1 that begins at least 1 year after the date of enactment of this Act.

SEC. 4. ADDITIONAL FUNDING FOR HOSPITAL COSTS.

There are hereby appropriated to the Secretary of Health and Human Services such amounts as may be required to provide for additional payments to hospitals for their reasonable additional, incremental costs incurred in order to comply with the requirements imposed by this Act (and the amendments made by this Act).

By Mr. MURKOWSKI (for himself and Mr. WELLSTONE):

S. 2615. A bill to amend title XVII of the Social Security Act to provide for improvements in access to services in rural hospitals and critical access hospitals; to the Committee on Finance.

Mr. MURKOWSKI. Mr. President, today I am introducing legislation that is designed to strengthen and improve the health care delivered to rural Medicare beneficiaries. The ''Rural Community Hospital Assistance Act of 2002'' ensures that our Nation's seniors will be able to receive the same quality of inpatient care throughout the country, regardless of whether they live in New York City or Petersburg, AK.

The best insurance in the world is worthless if there is not a provider or facility nearby to deliver quality health care. Right now, in communities across the country, many Medicare beneficiaries are underserved because they have no access to care. This is wrong and intolerable. I remain committed to ensuring that all Americans, and especially those in currently underserved rural communities, received the care they deserve.

Unfortunately, a number of the problems facing rural health care arise from the actions and construct of the federal Medicare system. Its historical one-size-fits-all approach to health care delivery and reimbursement has led to small community facilities that lack the ability to make payroll, expand services, add new technologies, and guarantee comparable care to more urban providers.

In recent years, Congress has moved to even the playing field between urban and rural medicine. New classifications, such as Critical Access Hospitals, have allowed these truly safety-net facilities to remain in operation and serve their community. But more work must be done.

In 1994, a new payment system for hospital inpatient services was created to bring efficiency and cost savings into the Medicare program. The new prospective payment system paid hospitals a fixed amount before services were provided, and severed the historical link between reimbursement and reasonable costs. In 2000, hospital outpatient services were added to this payment system.

But what has this system meant for the small rural hospital that has only a handful of beds and cares for a small number of patients? Quite simply, lower volumes hurt the ability of rural hospitals to handle a prospective payment system. They have limited financial reserves, lack available funds to make capital improvements and, especially in the case of Alaska, have difficulty dealing with volume fluctuations that are often times tied to seasonal travel.

The ''Rural Community Hospital Assistance Act'' seeks to remedy this problem and a few others that are facing rural America. This legislation would proved enhanced cost-based reimbursement for critical access hospitals. Cost-based reimbursement for inpatient and outpatient services would include a ''return on equity'' to assist the small facilities in addressing technology and infrastructure needs. It would also provide an option for rural hospitals with less than 50 inpatient beds to receive enhanced cost-based reimbursement for inpatient, outpatient, and select post-acute care services.

Hospitals are resorting to Critical Access status for financial reasons. Rural hospitals are facing a financial crisis. In fact, rural facilities have a Medicare inpatient margin that is almost 10 percentage points lower than urban hospitals. And with these financial constraints, they have often been forced to pass on facility upgrades and acquiring new technologies. Who suffers? The seniors who can't receive the same state-of-the-art care simply because they aren't fortunate to live in a urban zip code.

This legislation is vital to the state of Alaska. Hospitals such as Petersburg Medical Center, Sitka Community, Valdez Community, Seward Medical Center, and Wrangell Medical Center will be able to modernize and expand services to their growing elderly population. Access and quality will increase. Seniors will reap the benefits.

I would like to remind my colleagues that many Alaskan hospitals are not on a road system. They are true safety-net facilities. If they are not there, a need will go unmet.

We must work together to strengthen Medicare. I encourage my colleagues to reflect upon the burdens placed upon rural hospitals and to consider this worthy bill. It is an incremental step towards leveling the playing field between rural and urban medicine. I urge my colleagues to act swiftly upon this bill.

I ask unanimous consent that the text of the ''Rural Community Hospital Assistance Act of 2002'' be printed in the RECORD.

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

S. 2615

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

SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECURITY ACT.

(a) SHORT TITLE.—This Act may be cited as the ''Rural Community Hospital Assistance Act of 2002''.

(b) AMENDMENTS TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered a reference to that section or other provision of the Social Security Act.

SEC. 2. ESTABLISHMENT OF RURAL COMMUNITY HOSPITAL (RCH) PROGRAM.

(a) IN GENERAL.—Section 1861 (42 U.S.C. 1395x) is amended by adding at the end of the following new subsection:

''Rural Community Hospital; Rural Community Hospital Services

''(ww)(1) The term 'rural community hospital' means a hospital (as defined in subsection (e)) that—

''(A) is located in a rural area (as defined in section 1886(d)(2)(D)) or treated as being so located pursuant to section 1886(d)(8)(E);

''(B) subject to subparagraph (B), has less than 51 acute care inpatient beds, as reported in its most recent cost report;

''(C) makes available 24-hour emergency care services;

''(D) subject to subparagraph (C), has a provider agreement in effect with the Secretary and is open to the public as of January 1, 2002; and

''(E) applies to the Secretary for such designation.

''(2) For purposes of paragraph (1)(B), beds in a psychiatric or rehabilitation unit of the hospital which is a distinct part of the hospital shall not be counted.

''(3) Subparagraph (1)(C) shall not be construed to prohibit any of the following from qualifying as a rural community hospital:

''(A) A replacement facility (as defined by the Secretary in regulations in effect on January 1, 2002) with the same service area (as defined by the Secretary in regulations in effect on such date).

''(B) A facility obtaining a new provider number pursuant to a change of ownership.

''(C) A facility which has a binding written agreement with an outside, unrelated party for the construction, reconstruction, lease, rental, or financing of a building as of January 1, 2002.

''(4) Nothing in this subsection shall be construed as prohibiting a critical access hospital from qualifying as a rural community hospital if the critical access hospital meets the conditions otherwise applicable to hospitals under subsection (e) and section 1866.''.

(b) PAYMENT.—

(1) INPATIENT SERVICES.—Section 1814 (42 U.S.C. 1395f) is amended by adding at the end the following new subsection:

''Payment for Inpatient Services Furnished in Rural Community Hospitals

''(m) The amount of payment under this part for inpatient hospital services furnished in a rural community hospital, other than such services furnished in a psychiatric or rehabilitation unit of the hospital which is a distinct part, is, at the election of the hospital in the application referred to in section 1861(ww)(1)(D)—

''(1) the reasonable costs of providing such services, without regard to the amount of the customary or other charge, or

''(2) the amount of payment provided for under the prospective payment system for inpatient hospital services under section 1886(d).''.

(2) OUTPATIENT SERVICES.—Section 1834 (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

''(n) PAYMENT FOR OUTPATIENT SERVICES FURNISHED IN RURAL COMMUNITY HOSPITALS.—The amount of payment under this part for outpatient services furnished in a rural community hospital is, at the election of the hospital in the application referred to in section 1861(ww)(1)(D)—

''(1) the reasonable costs of providing such services, without regard to the amount of the customary or other charge and any limitation under section 1861(v)(1)(U), or

''(2) the amount of payment provided for under the prospective payment system for covered OPD services under section 1833(t).''.

(3) HOME HEALTH SERVICES.—

(A) EXCLUSION FROM HOME HEALTH PPS.—

(i) IN GENERAL.—Section 1895 (42 U.S.C. 1395fff) is amended by adding at the end the following:

''(f) EXCLUSION.—

''(1) IN GENERAL.—In determining payments under this title for home health services furnished on or after October 1, 2002, by a qualified RCH-based home health agency (as defined in paragraph (2))—

''(A) the agency may make a one-time election to waive application of the prospective payment system established under this section to such services furnished by the agency shall not apply; and

''(B) in the case of such an election, payment shall be made on the basis of the reasonable costs incurred in furnishing such services as determined under section 1861(v), but without regard to the amount of the customary or other charges with respect to such services or the limitations established under paragraph (1)(L) of such section.

''(2) QUALIFIED RCH-BASED HOME HEALTH AGENCY DEFINED.—For purposes of paragraph (1), a 'qualified RCH-based home health agency' is a home health agency that is a provider-based entity (as defined in section 404 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Public Law 106–554; Appendix F, 114 Stat. 2763A–506) of a rural community hospital that is located—

''(A) in a county in which no main or branch office of another home health agency is located; or

''(B) at least 35 miles from any main or branch office of another home health agency.''.

(ii) CONFORMING CHANGES.—

(I) PAYMENTS UNDER PART A.—Section 1814(b) (42 U.S.C. 1395f(b)) is amended by inserting ''or with respect to services to which section 1895(f) applies'' after ''equipment'' in the matter preceding paragraph (1).

(II) PAYMENTS UNDER PART B.—Section 1833(a)(2)(A) (42 U.S.C. 1395l(a)(2)(A)) is amended by striking ''the prospective payment system under''.

(III) PER VISIT LIMITS.—Section 1861(v)(1)(L)(i) (42 U.S.C. 1395x(v)(1)(L)(i)) is amended by inserting ''(other than by a qualified RCH-based home health agency (as defined in section 1895(f)(2))'' after ''with respect to services furnished by home health agencies''.

(iii) CONSOLIDATED BILLING.—

(I) RECIPIENT OF PAYMENT.—Section 1842(b)(6)(F) (42 U.S.C. 1395u(b)(6)(F)) is amended by inserting ''and excluding home health services to which section to which section 1895(f) applies'' after ''provided for in such section''.

(II) EXCEPTION TO EXCLUSION FROM COVERAGE.—Section 1862(a) (42 U.S.C. 1395y(a)) is amended by inserting before the period at the end of the second sentence the following: ''and paragraph (21) shall not apply to home health services to which section 1895(f) applies''.

(4) RETURN ON EQUITY.—Section 1861(v)(1)(P) (42 U.S.C. 1395x(v)(1)(P)) is amended—

(A) by inserting ''(i)'' after ''(P)''; and

(B) by adding at the end the following:

''(ii)(I) Notwithstanding clause (i), subparagraph (S)(i), and section 1886(g)(2), such regulations shall provide, in determining the reasonable costs of the services described in subclause (II) furnished by a rural community hospital on or after October 1, 2002, for payment of a return on equity capital at a rate of return equal to 150 percent of the average specified in clause (i):

''(II) The services referred to in subclause (I) are inpatient hospital services, outpatient hospital services, home health services furnished by an RCH-based home health agency (as defined in section 1895(f)(2)), and ambulance services.

''(III) Payment under this clause shall be made without regard to whether a provider is a proprietary provider.''.

(5) EXEMPTION FROM 30 PERCENT REDUCTION IN REIMBURSEMENT FOR BAD DEBT.—Section 1861(v)(1)(T) (42 U.S.C. 1395x(v)(1)(T)) is amended by inserting ''(other than a rural community hospital)'' after ''In determining such reasonable costs for hospitals''.

(c) BENEFICIARY COST-SHARING FOR OUTPATIENT SERVICES.—Section 1834(n) (as added by subsection (b)(2)) is amended—

(1) by inserting ''(1)'' after ''(n)''; and

(2) adding at the end the following:

''(2) The amounts of beneficiary cost sharing for outpatient services furnished in a rural community hospital under this part shall be as follows:

''(A) For items and services that would have been paid under section 1833(t) if provided by a hospital, the amount of cost sharing determined under paragraph (8) of such section.

''(B) For items and services that would have been paid under section 1833(h) if furnished by a provider or supplier, no cost sharing shall apply.

''(C) For all other items and services, the amount of cost sharing that would apply to the item or service under the methodology that would be used to determine payment for such item or service if provided by a physician, provider, or supplier, as the case may be.''.

(d) CONFORMING AMENDMENTS.—

(1) PART A PAYMENT.—Section 1814(b) (42 U.S.C. 1395f(b)) is amended by inserting ''other than inpatient hospital services furnished by a rural community hospital,'' after ''critical access hospital services,''.

(2) PART B PAYMENT.—

(A) IN GENERAL.—Section 1833(a) (42 U.S.C. 1395l(a)) is amended—

(i) in paragraph (2), in the matter before subparagraph (A), by striking ''and (I)'' and inserting ''(I), and (K)'';

(ii) by striking ''and'' at the end of paragraph (8);

(iii) by striking the period at the end of paragraph (9) and inserting ''; and''; and

(iv) by adding at the end the following:

''(10) in the case of outpatient services furnished by a rural community hospital, the amounts described in section 1834(n).''.

(B) AMBULANCE SERVICES.—Section 1834(l)(8) (42 U.S.C. 1395m(l)(8)), as added by section 205(a) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Appendix F, 114 Stat. 2763A–463), as enacted into law by section 1(a)(6) of Public Law 106–554, is amended—

(i) in the heading, by striking ''CRITICAL ACCESS HOSPITALS'' and inserting ''CERTAIN FACILITIES'';

(ii) by striking ''or'' at the end of subparagraph (A);

(iii) by redesignating subparagraph (B) as subparagraph (C);

(iv) by inserting after subparagraph (A) the following new subparagraph:

''(B) by a rural community hospital (as defined in section 1861(ww)(1)), or''; and

(v) in subparagraph (C), as so redesignated, by inserting ''or a rural community hospital'' after ''critical access hospital''.

(3) TECHNICAL AMENDMENTS.—

(A) CONSULTATION WITH STATE AGENCIES.—Section 1863 (42 U.S.C. 1395z) is amended by striking ''and (dd)(2)'' and inserting ''(dd)(2), (mm)(1), and (ww)(1)''.

(B) PROVIDER AGREEMENTS.—Section 1866(a)(2)(A) (42 U.S. C. 1395cc(a)(2)(A)) is amended by inserting ''section 1834(n)(2),'' after ''section 1833(b),''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after October 1, 2002.

SEC. 3. REMOVING BARRIERS TO ESTABLISHMENT OF DISTINCT PART UNITS BY RCH AND CAH FACILITIES.

(a) IN GENERAL.—Section 1886(d)(1)(B) (42 U.S.C. 1395ww(d)(1)(B)) is amended by striking ''a distinct part of the hospital (as defined by the Secretary)'' in the matter following cause (v) and inserting ''a distinct part (as defined by the Secretary) of the hospital or of a critical access hospital or a rural community hospital''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to determinations with respect to distinct part unit status that are made on or after October 1, 2002.

SEC. 4. IMPROVEMENTS TO MEDICARE CRITICAL ACCESS HOSPITAL (CAH) PROGRAM.

(a) EXCLUSION OF CERTAIN BEDS FROM BED COUNT.—Section 1820(c)(2) (42 U.S.C. 1395i–4(c)(2)) is amended by adding at the end the following:

''(E) EXCLUSION OF CERTAIN BEDS FROM BED COUNT.—In determining the number of beds of a facility for purposes of applying the bed limitations referred to in subparagraph (B)(iii) and subsection (f), the Secretary shall not take into account any bed of a distinct part psychiatric or rehabilitation unit (described in the matter following clause (v) of section 1886(d)(1)(B)) of the facility, except that the total number of beds that are not taken into account pursuant to this subparagraph with respect to a facility shall not exceed 10.''.

(b) PAYMENTS TO HOME HEALTH AGENCIES OWNED AND OPERATED BY A CAH.—Section 1895(f) (42 U.S.C. 1395fff(f)), as added by section 2(b)(3), is further amended by inserting ''or by a home health agency that is owned and operated by a critical access hospital (as defined in section 1861(mm)(1))'' after ''as defined in paragraph (2))''.

(c) PAYMENTS TO CAH-OWNED SNFS.—

(1) IN GENERAL.—Section 1888(e) (42 U.S.C. 1395yy(e)) is amended—

(A) in paragraph (1), by striking ''and (12)'' and inserting ''(12), and (13)''; and

(B) by adding at the end thereof the following:

''(13) EXEMPTION OF CAH FACILITIES FROM PPS.—In determining payments under this part for covered skilled nursing facility services furnished on or after October 1, 2002, by a skilled nursing facility that is a distinct part unit of a critical access hospital (as defined in section 1861(mm)(1)) or is owned and operated by a critical access hospital—

''(A) the prospective payment system established under this subsection shall not apply; and

''(B) payment shall be made on the basis of the reasonable costs incurred in furnishing such services as determined under section 1861(v), but without regard to the amount of the customary or other charges with respect to such services or the limitations established under subsection (a).''.

(2) CONFORMING CHANGES.—

(A) IN GENERAL.—Section 1814(b) (42 U.S.C. 1395f(b)), as amended by subsection (b)(2)(A), is further amended in the matter preceding paragraph (1)—

(i) by inserting ''other than a skilled nursing facility providing covered skilled nursing facility services (as defined in section 1888(e)(2)) or posthospital extended care services to which section 1888(e)(13) applies,'' after ''inpatient critical access hospital services''; and

(ii) by striking ''1813 1886,'' and inserting ''1813, 1886, 1888,''.

(B) CONSOLIDATED BILLING.—

(i) RECIPIENT OF PAYMENT.—Section 1842(b)(6)(E) (42 U.S.C. 1395u(b)(6)(E)) is amended by inserting ''services to which paragraph (7)(C) or (13) of section 1888(e) applies and'' after ''other than''.

(ii) EXCEPTION TO EXCLUSION FROM COVERAGE.—Section 1862(a)(18) (42 U.S.C. 1395y(a)(18)) is amended by inserting ''(other than services to which paragraph (7)(C) or (13) of section 1888(e) applies)'' after ''section 1888(e)(2)(A)(i)''.

(d) PAYMENTS TO DISTINCT PART PSYCHIATRIC OR REHABILITATION UNITS OF CAHS.—Section 1886(b) (42 U.S.C. 1395ww(b)) is amended—

(1) in paragraph (1), by inserting '', other than a distinct part psychiatric or rehabilitation unit to which paragraph (8) applies,'' after ''subsection (d)(1)(B)''; and

(2) by adding at the end the following:

''(8) EXEMPTION OF CERTAIN DISTINCT PART PSYCHIATRIC OR REHABILITATION UNITS FROM COST LIMITS.—In determining payments under this part for inpatient hospital services furnished on or after October 1, 2002, by a distinct part psychiatric or rehabilitation unit (described in the matter following clause (v) of subsection (d)(1)(B)) of a critical access hospital (as defined in section 1861(mm)(1))—

''(A) the limits imposed under the preceding paragraphs of this subsection shall not apply; and

''(B) payment shall be made on the basis of the reasonable costs incurred in furnishing such services as determined under section 1861(v), but without regard to the amount of the customary or other charges with respect to such services.''.

(e) ELIMINATION OF ISOLATION TEST FOR COST-BASED CAH AMBULANCE SERVICES.—Paragraph (8) of section 1834(l) (42 U.S.C. 1395m(l)), as added by section 205(a) of BIPA, is amended by striking the comma at the end of the last subparagraph and all that follows and inserting a period.

(f) RETURN ON EQUITY.—Section 1861(v)(1)(P) (42 U.S.C. 1395x(v)(1)(P)), as amended by section 2(b)(4), is further amended by adding at the end the following:

''(iii)(I) Notwithstanding clause (i), subparagraph (S)(i), and section 1886(g)(2), such regulations shall provide, in determining the reasonable costs of the services described in subclause (II) furnished by a rural community hospital on or after October 1, 2002, for payment of a return on equity capital at a rate of return equal to 150 percent of the average specified in clause (i):

''(II) The services referred to in subclause (I) are inpatient critical access hospital services (as defined in section 1861(mm)(2)), outpatient critical access hospital services (as defined in section 1861(mm)(3)), extended care services provided pursuant to an agreement under section 1883, posthospital extended care services to which section 1888(e)(13) applies, home health services to which section 1895(f) applies, ambulance services to which section 1834(l) applies, and inpatient hospital services to which section 1886(b)(8) applies.

''(III) Payment under this clause shall be made without regard to whether a provider is a proprietary provider.''.

(g) TECHNICAL CORRECTIONS.—

(1) SECTION 403(b) OF BBRA 1999.—Section 1820(b)(2) (42 U.S.C. 1395i–4(b)(2)) is amended by striking ''nonprofit or public hospitals'' and inserting ''hospitals''.

(2) SECTION 203(b) OF BIPA 2000.—Section 1883(a)(3) (42 U.S.C. 1395tt(a)(3)) is amended—

(A) by inserting ''section 1861(v)(1)(G) or'' after ''Notwithstanding''; and

(B) by striking ''covered skilled nursing facility''.

(h) EFFECTIVE DATES.—

(1) ELIMINATION OF REQUIREMENTS.—The amendment made by subsections (a) and (b) shall apply to services furnished on or after October 1, 2002.

(2) TECHNICAL CORRECTIONS.—

(A) BBRA.—The amendment made by subsection (f)(1) shall be effective as if included in the enactment of section 403(b) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (Appendix F, 113 Stat. 1501A–321), as enacted into law by section 1000(a)(6) of Public Law 106–113.

(B) BIPA.—The amendment made by subsection (f)(2) shall be effective as if included in the enactment of section 203(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Appendix F, 114 Stat. 2763A–463), as enacted into law by section 1(a)(6) of Public Law 106–554.

Mr. WELLSTONE. Mr. President, I rise today along with my colleague, the Senator from Alaska, to introduce the Rural Community Hospital Assistance Act. Senator MURKOWSKI and I don't agree on a lot of issues. But one thing we both care very deeply about is the health of this Nation's rural hospitals. Rural hospitals provide essential care for more than 54 million people. They provide essential inpatient, outpatient and post-acute care, including skilled nursing, home health and rehabilitation services. Minnesota has more rural hospitals than any other state in the United States with the exception of Texas. The hospitals of rural America are the heart of our health care system. In rural America, how far away you are from your community hospital can be a matter of life and death.

But the health of our rural hospitals in 2002 is not good. Many are struggling to survive. Rural hospitals have Medicare inpatient margins that are 10 percent less than urban hospitals. Rural hospital total Medicare margins have declined significantly, falling to an average of negative 3.2 percent since 1999, and even lower margins, negative 5.4 percent, for rural hospitals with 50 or fewer beds. Rural hospital costs are increasing at a greater rate than urban hospitals. They can't survive on the Medicare prospective payment system that we've set up for them. That payment system provides a fixed hospital payment established in advance of the provisions of services, rather than providing reimbursement retroactively on the basis of costs. The Medicare Payment Advisory Commission (MedPAC) told the Congress last June that the Prospective Payment System is not working for small rural hospitals. We set up that system to contain costs and save money. But we can't have the kind of healthcare system that the people who live in the small towns and on the farms of America deserve, if we try to finance it on the cheap. This is about values. This is about priorities. This is about giving people who work hard all their lives the healthcare they deserve.

I voted against the Balanced Budget Act of 1997 because I was worried that it would lead to significant harm for our healthcare system. I was worried that it would hurt healthcare in our rural areas, in our cities, and that it would damage our healthcare safety net. Unfortunately, I was right and we have seen exactly the kind of problems I warned about. But one good thing we included was the Medicare Rural Hospital Flexibility Act which set up ''Critical Access Hospitals.'' The Critical Access Hospital (CAH) program provides cost based Medicare reimbursement for qualifying rural hospitals with 15 of fewer inpatient beds. Small rural hospitals face unique circumstances that require special consideration when developing Medicare payment policies. Because of their small size, a median of 58 beds compared to 186 beds for urban hospitals, rural hospitals have a much more difficult time surviving within a prospective payment system. Rural hospitals have fewer financial reserves and greater volume fluctuations than urban hospitals. They rely on Medicare as a source of revenue more than other hospitals. They have to deal with isolation, high levels of poverty, and shortages of critical health care professionals, making it much more difficult for small rural hospitals to absorb the impact of policy and market changes.

The Critical Access Hospital Program has done a good job. There are 43 Critical Access Hospitals in Minnesota. But this program needs to be updated and it needs to be extended and enhanced if we are going to restore our rural hospitals to financial health. The Rural Community Hospital Assistance Act will provide enhanced cost based reimbursement for Critical Access Hospitals, and extend such reimbursement to post acute care services. It will permit and extend enhanced reimbursement fore geriatric psychiatric care. It will provide enhanced cost based reimbursement for ambulance services. It would also provide an option for rural hospitals with less than 50 acute care beds to receive cost based reimbursement for inpatient, outpatient, and ambulance services. This is very important because so many rural hospitals with less than 50 beds are struggling just to survive. It is essential that the doors of our rural hospitals remain open. I ask my colleagues to join Senator MURKOWSKI and me in supporting this important legislation for rural America.

By Mr. THURMOND:

S. 2616. A bill to amend the Public Health Service Act to establish an Office of Men's Health; to the Committee on Health, Education, Labor, and Pensions.

Mr. THURMOND. Mr. President, this week in the United States we are commemorating Men's Health Week. The National Men's Health Week Act was passed by Congress and signed into law in 1994. Since then Men's Health Week has been celebrated each year as the week leading up to and including Father's Day. I was proud to be a cosponsor of that Act. Today, I rise to introduce the Men's Health Act of 2002, to establish an Office of Men's Health within the Department of Health and Human Services to promote men's health in America.

In this Nation, there is an ongoing, increasing, and predominantly silent crisis in the health and well-being of men. Due to a lack of awareness, poor health education, and culturally-induced behavior patterns, the state of men's health and well-being is deteriorating steadily. Heart disease, stroke, and various cancers, including prostate and testicular cancer, continue to be

major areas of concern. We must address these issues with diligent educational efforts, prevention and treatment as we seek to enhance the quality and duration of men's lives. Improved distribution of information concerning the health challenges men face and the utilization of the appropriate preventive measures are imperative to addressing this need.

As a lifelong advocate of regular medical exams, daily exercise, and a balanced diet, I feel strongly that an Office of Men's Health should be established to help improve the overall health of America's male population. The bill I am introducing is similar to a bill introduced in the House of Representatives. I invite my colleagues to join me in supporting this important measure. 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. 2616

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 ''Men's Health Act of 2002''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) A silent health crisis is affecting the health and well-being of America's men.

(2) While this health crisis is of particular concern to men, it is also a concern for women regarding their fathers, husbands, sons, and brothers.

(3) Men's health is a concern for employers who pay the costs of medical care, and lose productive employees.

(4) Men's health is a concern to Federal and State governments which absorb the enormous costs of premature death and disability, including the costs of caring for dependents left behind.

(5) The life expectancy gap between men and women has increased from one year in 1920 to almost six years in 1998.

(6) Prostate cancer is the most frequently diagnosed cancer in the United States among men, accounting for 36 percent of all cancer cases.

(7) An estimated 180,000 men will be newly diagnosed with prostate cancer this year alone, and 37,000 will die.

(8) The American Heart Association reports that heart attack is the single biggest killer of American males. Men are more likely to die of stroke and are almost twice as likely to die of heart disease than are women. High blood pressure increases the risk for stroke and heart attack and men under age 55 are much more likely to suffer from high blood pressure than are women.

(9) An estimated 7,600 men will be diagnosed this year with testicular cancer, and 400 of these men will die of this disease in 2002. A common reason for delay in treatment of this disease is a delay in seeking medical attention after discovering a testicular mass.

(10) Studies show that men are at least 25 percent less likely than women to visit a doctor, and are significantly less likely to have regular physician check-ups and obtain preventive screening tests for serious diseases.

(11) Appropriate use of tests such as prostate specific antigen (PSA) exams and blood pressure, blood sugar, and cholesterol screens, in conjunction with clinical exams and self-testing, can result in the early detection of many problems and in increased survival rates.

(12) Educating men, their families, and health care providers about the importance of early detection of male health problems can result in reducing rates of mortality for male-specific diseases, as well as improve the health of America's men and its overall economic well-being.

(13) Recent scientific studies have shown that regular medical exams, preventive screenings, regular exercise, and healthy eating habits can help save lives.

(14) Establishing an Office of Men's Health is needed to investigate these findings and take such further actions as may be needed to promote men's health.

SEC. 3. ESTABLISHMENT OF OFFICE OF MEN'S HEALTH.

(a) IN GENERAL.—Title XVII of the Public Health Service Act (42 U.S.C. 300u et seq.) is amended by adding at the end the following:

''OFFICE OF MEN'S HEALTH

''SEC. 1711. The Secretary shall establish within the Department of Health and Human Services an office to be known as the Office of Men's Health, which shall be headed by a director appointed by the Secretary. The Secretary, acting through the Director of the Office, shall coordinate and promote the status of men's health in the United States.''.

(b) REPORT.—Not later than two years after the date of the enactment of this Act, the Secretary of Health and Human Services, acting through the Director of the Office of Men's Health (established under section 1711 of the Public Health Service Act as added by subsection (a)), shall submit to Congress a report describing the activities of such Office, including findings that the Director has made regarding men's health.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 283—RECOGNIZING THE SUCCESSFUL COMPLETION OF DEMOCRATIC ELECTIONS IN THE REPUBLIC OF COLOMBIA

Mr. GRAHAM (for himself, Mr. DEWINE, Mr. MCCAIN, Mr. TORRICELLI, Mr. MILLER, Mr. LEAHY, Mr. FEINGOLD, Mr. DODD, Mr. NELSON of Florida, Mr. GRASSLEY, Mr. BREAUX, Mr. WARNER, Mr. NELSON of Nebraska, Mr. COCHRAN, Mr. HELMS, Mr. CHAFEE, Mr. REID, Mr. ROCKEFELLER, Mr. BAYH, Mr. LUGAR, Mr. BROWNBACK, Mr. ALLEN, and Mr. SESSIONS) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 283

Whereas on May 26, 2002, the Republic of Colombia successfully completed democratic multiparty elections for President and Vice President;

Whereas these elections were deemed by international and domestic observers, including the United Nations and the Organization of American States, to be free, fair, and a legitimate nonviolent expression of the will of the people of the Republic of Colombia;

Whereas the United States has consistently supported the efforts of the people of the Republic of Colombia to strengthen and continue their democracy;

Whereas the Senate notes the courage of the millions of citizens of the Republic of Colombia that turned out to vote in order to freely and directly express their opinion; and

Whereas these open, fair, and democratic elections of the new President and Vice President of the Republic of Colombia, and the speedy posting of election results, should be broadly commended: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the government and the people of the Republic of Colombia for the successful completion of democratic elections held on May 26, 2002, for President and Vice President;

(2) congratulates President-elect Alvaro Uribe Velez and Vice President-elect Francisco Santos Calderon on their recent victory and their continuing strong commitment to democracy, national reconciliation, and reconstruction;

(3) congratulates Colombian President Andres Pastrana, who has been a strong ally of the United States, a long-standing supporter of peace process negotiations, and a builder of national unity in the Republic of Colombia, for his personal commitment to democracy;

(4) commends all Colombian citizens and political parties for their efforts to work together to take risks for democracy and to willfully pursue national reconciliation in order to cement a lasting peace and to strengthen democratic traditions in the Republic of Colombia;

(5) supports Colombian attempts to—

(A) ensure democracy, national reconciliation, and economic prosperity;

(B) support human rights and rule of law; and

(C) abide by all the essential elements of representative democracy as enshrined in the Inter-American Democratic Charter, Organization of American States, and United Nations principles;

(6) encourages the government and people of the Republic of Colombia to continue their struggle against the evils of narcotics and all forms of terrorism;

(7) encourages the government of the Republic of Colombia to continue to promote—

(A) the professionalism of the Colombian Armed Forces and Colombian National Police; and

(B) judicial and legal reforms; and

(8) reaffirms that the United States is unequivocally committed to encouraging and supporting democracy, human rights, rule of law, and peaceful development in the Republic of Colombia and throughout the Americas.

Mr. GRAHAM. Mr. President, I rise, along with 21 of my colleagues, to submit a resolution commending the country and the people of Colombia on continuing the tradition of democracy, with a plurality freely and fairly voting for President-elect Alvaro Uribe Velez and Vice President-elect Francisco Santos Calderon on May 26, 2002.

In Colombia, the evil hand of terror and suffering and fear and death has been an everyday reality for too long. In 2000, over 44 percent of the worldwide incidents of terrorist attacks against U.S. citizens and United States interests were in the country of Colombia. These attacks pose a threat to Colombia, the stability of Latin America, the security of the Western Hemisphere, and the direct and indirect security of many United States citizens, businesses, and interests.

Yet, despite the constant threat and reality of violence in Colombia, the

citizens and government of Colombia carried out democratic elections, deemed by international standards to be free, fair and the express will of the Colombian people. As Latin America's oldest democracy, the legacy of leaders elected by the people continues.

We desire to work closely with both President-elect Uribe and Vice President-elect Santos to reach our common goals of continued democracy, stability, peace, and the elimination of drugs, terrorism and corruption from our countries and our hemisphere.

I urge my colleagues to join me in support of this resolution and the great democracy of Colombia.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3832. Mr. REID (for Mr. DORGAN (for himself, Mr. DURBIN, Mrs. CARNAHAN, Mr. CORZINE, and Ms. STABENOW)) proposed an amendment to amendment SA 3831 proposed by Mr. CONRAD to the bill (H.R. 8) to amend the Internal Revenue Code of 1986 to phaseout the estate and gift taxes over a 10-year period, and for other purposes.

SA 3833. Mr. GRAMM (for himself, Mr. KYL, Mr. BROWNBACK, and Mr. HUTCHINSON) proposed an amendment to the bill H.R. 8, supra.

SA 3834. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 2600, to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3832. Mr. REID (for Mr. DORGAN (for himself, Mr. DURBIN, Mrs. CARNAHAN, Mr. CORZINE, and Ms. STABENOW)) proposed an amendment to amendment SA 3831 proposed by Mr. CONRAD to the bill (H.R. 8) to amend the Internal Revenue Code of 1986 to phaseout the estate and gift taxes over a 10-year period, and for other purposes; as follows:

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

SECTION 1. ESTATE TAX WITH FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.

(a) ELIMINATION OF ESTATE TAX REPEAL.—

(1) IN GENERAL.—Subtitle A of title V, sections 511(d), 511(e), and 521(b)(2), and subtitle E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 are repealed.

(2) CONFORMING AMENDMENTS.—

(A) The table contained in section 2001(c)(2)(B) of the Internal Revenue Code of 1986 is amended by striking ''2007, 2008, and 2009'' and inserting ''2007 and thereafter''.

(B) The table contained in section 2010(c) of such Code is amended by striking ''2009'' and inserting ''2009 and thereafter''.

(C) Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended—

(i) by striking ''this Act'' and all that follows through ''2010.'' in subsection (a) and inserting ''this Act (other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.'', and

(ii) by striking '', estates, gifts, and transfers'' in subsection (b).

(b) INCREASE IN EXCLUSION AMOUNT.—The table contained in section 2010(c) of the Internal Revenue Code of 1986 (relating to applicable credit amount), as amended by subsection (a)(2)(B), is amended by striking ''$3,500,000'' and inserting ''$4,000,000''.

(c) FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.—

(1) IN GENERAL.—Section 2057(a) (relating to deduction for family-owned business interests) is amended—

(A) by striking paragraphs (2) and (3), and

(B) by striking ''GENERAL RULE.—'' and all that follows through ''For purposes'' and inserting ''ALLOWANCE OF DEDUCTION.—For purposes''.

(2) PERMANENT DEDUCTION.—Section 2057 is amended by striking subsection (j).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after December 31, 2002.

SA 3833. Mr. GRAMM (for himself, Mr. KYL, Mr. BROWNBACK, and Mr. HUTCHINSON) proposed an amendment to the bill H.R. 8, to amend the Internal Revenue Code of 1986 to phaseout the estate and gift taxes over a 10-year period, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Permanent Death Tax Repeal Act of 2002''.

SEC. 2. ESTATE TAX REPEAL MADE PERMANENT.

(a) IN GENERAL.—Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended—

(1) in subsection (a) by striking ''shall not apply—'' and all that follows and inserting ''(other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.'', and

(2) in subsection (b) by striking '', estates, gifts, and transfers''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

SA 3834. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 2600, to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. INSURANCE RATE INCREASES FOR TERRORISM RISKS.

(a) CALCULATIONS OF TERRORISM INSURANCE PREMIUMS.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary shall promulgate regulations establishing parameters for insurance rate increases for terrorism risk.

(2) CONSULTATION.—In developing the regulations under paragraph (1), the Secretary shall consult with the NAIC and appropriate Federal agencies.

(3) MODIFICATIONS.—The Secretary may periodically modify the regulations promulgated under paragraph (1), as necessary to account for changes in the marketplace.

(4) EXCLUSIONS.—Under exceptional circumstances, the Secretary may exclude a participating insurance company from coverage under any of the regulations promulgated under paragraph (1).

(b) SEPARATE ACCOUNT REQUIRED.—If a participating insurance company increases annual premium rates on covered risks under subsection (a), the company—

(1) shall deposit the amount of the increase in premium in a separate, segregated account;

(2) shall identify the portion of the premium insuring against terrorism risk on a separate line item on the policy; and

(3) may not disburse any funds from amounts in that separate, segregated account for any purpose other than the payment of losses from acts of terrorism.

(c) LIMITATION ON RATE INCREASES FOR COVERED RISKS.—

(1) EXISTING POLICIES.—Any rate increase by a participating insurance company on covered risks during any period within the Program may not exceed the amount established by the Secretary under subsection (a).

(2) NEW POLICIES.—Property and casualty insurance policies issued after the date of enactment of this Act shall conform with the regulations issued by the Secretary under subsection (a).

(d) REFUNDS ON EXISTING POLICIES.—Not later than 90 days after the date of enactment of this Act, a participating insurance company shall—

(1) review the premiums charged under property and casualty insurance policies of the company that are in force on the date of enactment of this Act;

(2) calculate the portion of the premium paid by the policy holder that is attributable to terrorism risk during the period in which the company is participating in the Program; and

(3) refund the amount calculated under paragraph (2) to the policy holder, with an explanation of how the refund was calculated.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DORGAN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to hold a Hearing during the session of the Senate on Wednesday, June 12, at 2:30 p.m. in SD–366. The purpose of this hearing is to receive testimony on the following bills:

S. 1257 and H.R. 107, to require the Secretary of the Interior to conduct a theme study to identify sites and resources to commemorate and interpret the Cold War;

S. 1312 and H.R. 2109, to authorize the Secretary of the Interior to conduct a special resource study of Virginia Key Beach, Florida, for possible inclusion in the National Park System;

S. 1944, to revise the boundary of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area in the State of Colorado, and for other purposes;

H.R. 38, to provide for additional lands to be included within the boundaries of the Homestead National Monument of America in the State of Nebraska, and for other purposes;

H.R. 980, to establish the Moccasin Bend National Historic Site in the State of Tennessee as a unit of the National Park System; and

H.R. 1712, to authorize the Secretary of the Interior to make adjustments to the boundary of the National Park of American Samoa to include certain

portions of the islands of Ofu and Olosega within the Park, and for other purposes.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. DORGAN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, June 12, 2002, at 9:30 a.m. to hold a hearing to receive testimony further analyzing the benefits and costs of multi-pollutant legislation. The hearing will be held in SD–406.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. DORGAN. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, June 12, 2002 at 9:30 a.m. for the purpose of holding a hearing entitled ''Protecting Our Kids: What is Causing the Current Shortage in Childhood Vaccines?''

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

COMMITTEE ON THE JUDICIARY

Mr. DORGAN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''The Criminal Justice System and Mentally Ill Offenders'' on Wednesday, June 12, 2002, in Dirksen room 226 at 9 a.m.

Agenda

Witnesses

Panel I: The Honorable George Ryan, Governor of the State of Illinois.

Panel II: The Honorable Matt Bettenhausen, Illinois Deputy Governor for Criminal Justice Policy, Executive Director, Illinois Governor's Commission on Capital Punishment; Donald Hubert, Esq., Donald Hubert & Associates, Chicago, IL, Member, Illinois Governor's Commission on Capital Punishment; John J. Kinsella, Esq., First Assistant State's Attorney, DuPage County, IL; Professor Larry Marshall, Northwestern University Law School, Legal Director, Center on Wrongful Convictions; Kent Scheidegger, Legal Director, Criminal Justice Legal Foundation, Sacramento, CA; Scott Turow, Esq., Sonnenschein Nath & Rosenthal, Chicago, IL, Member, Illinois Governor's Commission on Capital Punishment; and Druanne D. White, Esq., Solicitor, Tenth Judicial Circuit, South Carolina.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. DORGAN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, June 12, 2002, at 2:30 p.m. to hold a closed hearing on the joint inquiry into the events of September 11, 2001.

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY AND SPACE

Mr. DORGAN. Mr. President, I ask unanimous consent that the Subcommittee on Science, Technology and Space of the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, June 12, 2002, at 2:30 p.m. on the Internet Corporation for Assigned Names and Numbers.

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

ORDERS FOR THURSDAY, JUNE 13, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9 a.m., Thursday, June 13; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and there be a period of morning business until 10 a.m., with Senators permitted to speak for up to 10 minutes each, with the first half of the time under the control of the majority leader or his designee and the second half under the control of the Republican leader or his designee that at 10 a.m. the Senate begin consideration of the terrorism insurance bill, as under the previous order.

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

ADJOURNMENT UNTIL 9 A.M. TOMORROW

Mr. REID. Mr. President, we have worked long and hard today. As I have said before, we had some very good debate. I think it is time that we close business for the day. I ask unanimous consent the Chair deem the Senate closed for the day, as under the previous order, as there is no further business to come before the Senate.

There being no objection, the Senate, at 6:52 p.m., adjourned until Thursday, June 13, 2002, at 9 a.m.