



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 108<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 150

WASHINGTON, WEDNESDAY, JUNE 23, 2004

No. 88

## Senate

(Legislative day of Tuesday, June 22, 2004)

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

### PRAYER

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

Let us pray:

Wondrous Sovereign of the sea, land, and air, at Your command, oceans and rivers flow and flowers blossom. Mountains and hills tremble in Your presence. Be exalted, O God, among the nations.

Bless America. Illuminate its path through the night with Your divine light. Bless these gifted Senators to whom You have delegated the challenging responsibility of governmental service. May they exercise their authority responsibly. Help them to be faithful stewards of Your blessings. Remind them that they possess nothing of value that they have not received, for every good gift comes from You. Protect all who put their trust in You, particularly the members of our military. Help those whom You have set upon the sure foundation of Your loving-kindness.

We pray this in the Name of the One who lives and reigns with You now and forever.

Amen.

### PLEDGE OF ALLEGIANCE

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

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

### RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. FRIST. Mr. President, this morning we resume consideration of the Defense authorization bill. The agreement last night provides for debate on five amendments prior to the votes in relation to those amendments. Those amendments are the Corzine amendment on Reserve retirement, the McConnell amendment and Kennedy amendment on an Iraq report, the Reed amendment on missile defense, and the Byrd amendment on troop cap.

If all debate time on these amendments is used, we will proceed to a series of votes at approximately 11:15 this morning. I had originally hoped and expected we would be voting on final passage of the Defense bill this morning. Unfortunately, we have not been able to reach an agreement providing for the Senate to complete the bill. Therefore, last night I filed a cloture motion in the event we don't complete the bill. Our intention is to complete the bill this afternoon.

If we are unable to complete the Defense bill, that cloture vote would occur tomorrow. This is the fourth week of consideration of the Defense authorization, and it is time for us to finish the bill. I think we are proceeding along those lines.

I remind my colleagues that if a cloture vote occurs and the Senate votes cloture, germane amendments will still be in order in addition to an additional 30 hours of debate. It is vitally important that we consider the Defense appropriations bill this week, which will ensure our troops have the appropriate resources available to them. We need to begin this appropriations process, and I will be seeking an agreement on the Defense appropriations bill this week before the recess.

I add we will have additional judicial nominations today and into the evening, if necessary. We need to have those votes. We still have nine nomi-

nees who are to be considered on the floor and voted upon. These unanimous votes clearly will consume valuable Senate time and it may be necessary to have these votes into the evening to ensure we process these judicial nominations.

Finally, we have an additional 23 ambassadorships and U.N. Representatives which are now available on the calendar. Included on this list is the nomination of one of our former colleagues, Jack Danforth, to be our Ambassador to the U.N. These are vitally important nominations to act on. We need to do that expeditiously. We have had a blanket objection to executive nominations, but I believe these diplomatic nominations should not be held up for unrelated issues.

I have heard there may be debate necessary on the Danforth nomination. I hope we can look at a reasonable amount of time, or we will be here late at night, or we will have to delay the start of the recess in order to vote on these important nominations.

I yield the floor.

Mr. KENNEDY. Will the leader yield for a question?

Mr. FRIST. Yes.

### RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. First, the Senator from Nevada is recognized.

### FINISHING DOD AUTHORIZATION

Mr. REID. Mr. President, we on this side want to finish this bill. In fact, last night, as we indicated, we agreed to shorten the time to the five amendments that are pending. We want to move forward. We feel we can finish this bill. One of the suggestions—and I have not had a chance to talk to the managers—but rather than having the votes after this stack, we can have another series of amendments when we

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



Printed on recycled paper.

S7203

finish debate on these, so we would not be interrupted continually with votes.

We are going to do everything within our power to complete this bill as quickly today as possible. There has been this contentious issue raised dealing with delaying amendments. This is not going to hold up this bill. We believe we can dispose of these amendments in a relatively short period of time and go to final passage. The Leahy amendment should not hold up this bill. We have cooperated, we feel, immeasurably. We started out with about 300 amendments, and we have completed work on these. We are waiting to go. We hope the time is shortened, and we will move forward and do the best we can.

I apologize to my friend from Massachusetts. He has a question to ask.

The PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Yes. One of the amendments we were considering yesterday was the Reid amendment, offered on behalf of the Senator from Vermont, myself, and other members of the Judiciary Committee, about getting certain reports we have not been able to receive yet. I am wondering, since it is still in order, whether we are going to have an opportunity to address that issue in a short time discussion or debate, or is it the position of the majority leader that we are not going to have an opportunity to have that amendment offered and considered and voted on and disposed of?

Mr. FRIST. Mr. President, in response, through the Chair, that discussion continued last night with the managers as to how that particular amendment is handled. What we did do last night, so we can continue business, is agree upon the five we laid out. No commitments have been made, at least from the leadership level, in terms of particular amendments that are out there.

So I suggest right now, or after you complete your remarks, getting together with the managers of the bill. Right now the only agreement is we will continue straight ahead with these five amendments and keep the ball rolling.

Mr. KENNEDY. Mr. President, I thank the majority leader for his willingness to move ahead. There are a number of us who are going to insist we at least have an opportunity to offer that amendment and address it at some time. I know I can speak for the Senator from Vermont, and he would be willing to enter into a short time agreement. It is a matter of enormous importance and consequence involving, we believe, the security of American troops because that is what the Geneva Conventions are all about: protecting American troops.

It is important on an issue of this importance and consequence that we move toward final conclusion, that we have a resolution of that issue. As a matter of fact, it is, I believe, imperative.

I thank the majority leader. We will find how we can deal with this issue over the course of the day. I thank our leader as well.

#### RESERVATION OF LEADER TIME

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

#### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 2400, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2400) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Service, and other purposes.

Pending:

Bond modified amendment No. 3384, to include certain former nuclear weapons program workers in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program and to provide for the disposal of certain excess Department of Defense stocks for funds for that purpose.

Reed amendment No. 3353, to limit the obligation and expenditure of funds for the Ground-based Midcourse Defense program pending the submission of a report on operational test and evaluation.

Bingaman Amendment No. 3459, to require reports on the detainment of foreign nationals by the Department of Defense and on Department of Defense investigations of allegations of violations of the Geneva Convention.

Warner amendment No. 3460 (to amendment No. 3459), in the nature of a substitute.

Feingold modified amendment No. 3288, to rename and modify the authorities relating to the Inspector General of the Coalition Provisional Authority.

Landrieu/Snowe amendment No. 3315, to amend title 10, United States Code, to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62 and older, and to provide for a one-year open season under that plan.

Reid (for Daschle) amendment No. 3409, to assure that funding is provided for veterans health care each fiscal year to cover increases in population and inflation.

Ensign amendment No. 3467 (to amendment No. 3315), to provide a fiscally responsible open enrollment authority.

Daschle amendment No. 3468 (to amendment No. 3409), to assure that funding is provided for veterans health care each fiscal year to cover increases in population and inflation.

Reid (for Akaka) amendment No. 3414, to provide for fellowships for students to enter Federal service.

Reid (for Leahy) amendment No. 3387, relative to the treatment of foreign prisoners.

Warner (for Lott) amendment No. 3220, to repeal the authority of the Secretary of Defense to recommend that installations be placed in inactive status as part of the recommendations of the Secretary during the 2005 round of defense base closure and realignment.

Warner (for Bennett/Hatch) amendment No. 3373, to provide for the protection of the Utah Test and Training Range.

Warner (for Bennett) amendment No. 3403, to prohibit a full-scale underground nuclear test of the Robust Nuclear Earth Penetrator weapon without a specific authorization of Congress.

Warner (for Inhofe) amendment No. 3280, to reauthorize energy saving performance contracts.

Warner (for McCain) amendment No. 3442, to impose requirements for the leasing of aerial refueling aircraft for the Air Force.

Warner (for McCain) Amendment No. 3443, to impose requirements for the aerial refueling aircraft program of the Air Force.

Warner (for McCain) amendment No. 3444, to restrict leasing of aerial refueling aircraft by the Air Force.

Warner (for McCain) amendment No. 3445, to prohibit the leasing of Boeing 767 aircraft by the Air Force.

Levin (for Biden/Lugar) amendment No. 3378, to provide certain authorities, requirements, and limitations on foreign assistance and arms exports.

Levin (for Byrd) amendment No. 3423, to modify the number of military personnel and civilians who may be assigned or retained in connection with Plan Colombia.

Levin (for Byrd) amendment No. 3286, to restrict acceptance of compensation for contractor employment of certain executive branch policymakers after termination of service in the positions to which appointed.

Levin (for Corzine) amendment No. 3303, to amend title 10, United States Code, to reduce the age for receipt of military retired pay for nonregular service from 60 to 55.

Levin (for Daschle) amendment No. 3328, to require the Secretary of the Air Force to maintain 3 additional B-1 bomber aircraft, in addition to the current fleet of 67 B-1 bomber aircraft, as an attrition reserve for the B-1 bomber aircraft fleet.

Levin (for Daschle) amendment No. 3330, to authorize the provision to Indian tribes of excess nonlethal supplies of the Department of Defense.

Levin (for Dayton) amendment No. 3203, to require a periodic detailed accounting of costs and expenditures for Operation Iraqi Freedom, Operation Enduring Freedom, and all other operations relating to the Global War on Terrorism.

Levin (for Dodd) amendment No. 3311, relating to the imposition by the Department of Defense of offsets against certain contractors.

Levin (for Dodd) amendment No. 3310, to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to the Federal law enforcement officers in certain high-cost areas.

Levin (for Feingold) amendment No. 3400, to enable military family members to take leave to attend to deployment-related business and tasks.

Levin (for Graham (FL)) amendment No. 3300, to amend the Haitian Refugee Immigration Fairness Act of 1998.

Levin (for Leahy) amendment No. 3388, to obtain a full accounting of the programs and activities of the Iraqi National Congress.

Levin amendment No. 3336, to authorize the demolition of facilities and improvements on certain military installations approved for closure under the defense base closure and realignment process.

Levin (for Kennedy) amendment No. 3201, to assist school districts serving large numbers or percentages of military dependent children affected by the war in Iraq or Afghanistan, or by other Department of Defense personnel decisions.

Levin (for Kennedy) amendment No. 3377, to require reports on the efforts of the President to stabilize Iraq and relieve the burden on members of the Armed Forces of the United States deployed in Iraq and the Persian Gulf region.

Levin (for Reed/Kohl) amendment No. 3355, to ensure the soundness of defense supply chains through the support of Manufacturing Extension Partnership centers that improve the productivity and competitiveness of small manufacturers; and to clarify the fiscal year 2004 funding level for a National Institute of Standards and Technology account.

The PRESIDENT pro tempore. The Senator from Virginia.

Mr. WARNER. I thank the Chair.

Mr. President, I see the proponent of the first amendment on the floor, and we are prepared to engage. So at this time, I yield the floor.

The PRESIDENT pro tempore. The Senator from New Jersey.

AMENDMENT NO. 3303

Mr. CORZINE. Mr. President, I call up amendment No. 3303 and ask for its immediate consideration.

The PRESIDENT pro tempore. The amendment is pending. The Senator is recognized.

Mr. CORZINE. Mr. President, I ask unanimous consent that Senator MURRAY from Washington be added as a co-sponsor.

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

Mr. CORZINE. Mr. President, this amendment is very simple, but very important for those who serve us so well and so ably across the globe. It is an amendment that will lower the retirement age for National Guard and Reserve troops from 60 to 55. During this critical time when so many members of the Guard and Reserve are serving bravely in Iraq, Afghanistan, and elsewhere, I think this is the least we can do.

We are moving the retirement age to match up with the civilian retirement age in the country. The current retirement age was established 50 years ago at a time when it neared civil service retirement age. In the intermediate time, we have lowered civil service retirement age to 55, but we left Guard and Reserves at 60. It does not make sense that we are treating civilian Federal employees differently than we are treating reservists, particularly, I will point out, in a changed security situation.

Because the world has changed so dramatically since the cold war, our Guard and Reserves have a very different role today than they did during that time period. I have a chart that shows in stark terms what has actually happened with deployment of our Guard and Reserve members. This is the number of major contingencies and operations with Reserve participation. From 1953 to 1990, there were 11 callups. From 1991 to 2001, there were 50. I think all of us know how seriously our Guard and Reserve are involved in Iraq and Afghanistan.

They truly have become an integral part and contributor of our Nation's defense on the front lines. Not coming into the Reserve training centers once a month, 2 weeks on a summer's day, but they are on the front lines defending America day in and day out, and I

think it is time we recognize that and made some adjustments to 50-year-old policies.

Considering the demands we are placing on our ready Reserve right now, not only do they make up 46 percent of our uniformed Armed Forces personnel, they are especially important in areas of expertise most pertinent to the stabilization and nation-building missions in Iraq and Afghanistan. Guard and Reserves count for 97 percent of military civil affairs units—think of what we are using them for in Afghanistan—and 70 percent of engineering units. Think of what we are trying to do with regard to reconstruction in both Afghanistan and Iraq. And 66 percent of our military police.

As a matter of fact, they just called up a National Guard unit in my home State of New Jersey. They sent out about 100 folks to Guantanamo. It is incredible how we are using over and over our Guard and reservists for the very functions we need in the new world we are facing.

As we all know, mobilization is up dramatically. More than 160,000 Reserve personnel are now on active duty. Last year, the number of Reserves was more than 400 percent what it had been 4 years earlier—a 400-percent increase in the number of reservists on duty relative to 4 years ago. Again, the number of deployments is exploding, whether it is in Haiti, Afghanistan, Bosnia, or Kosovo. Name it, that is where we are using these folks day in and day out.

Reservists are serving longer durations as well. Last year the average duration was 319 days for the reservists and guardsmen. That, by the way, only included those who completed their assignments. That is looking at the folks who had been sent back home. That does not take into account the extended time many of those on call are serving.

With some 140,000 troops currently serving in Iraq and 40 percent of Guard and Reserves, it is clear we are relying more and more on these brave Americans, more than at any time in the recent past.

The next chart I have demonstrates one component of our Reserve forces, the Army National Guard. By the way, in New Jersey, we have about 7,000 of the 9,000 National Guard folks on call, just as a backdrop—7,000 out of the 9,000. Until the end of 2002, the number of mobilized personnel was relatively stable at 20,000, which is what we see on this chart. After that, it exploded upward. It was about 70,000 when I last brought up this proposal when we were discussing the Iraq supplemental last year, and it is up 20,000 which, by the way, was in the October period, and now it has gone up another 24,000, to almost 95,000 National Guard personnel mobilized in the service of the Nation.

It is clear our Reserve forces are no longer a part-time force. This is not sideline work. We have entered a new era where a larger number of troops will be deployed for long periods of

time, and our policies need to change. We have a 50-year-old policy, one that does not even match up with our civilian retirement age. I think our National Guard and Reserve units have made an unbelievably important contribution, and we need to reflect that in our policies as we go forward.

That is what this amendment is about. I know the problems facing the Guard and Reserve because I have talked with a lot of these folks myself. There are 303 Guard and Reserve members from my State of New Jersey who are over the age of 55, fifty-five of whom have already been deployed. Additionally, there is a large swath of folks in that 45-to-55 age bracket. These people would like to have responses.

To make this a little more personal, 2 weeks ago Saturday, we lost Guard folks in Iraq. One was 51, and one was 46. These were people who had made long-term commitments to serve our Nation. They were wonderful people with great life stories about how they participated in the community.

I went out to Walter Reed, and there were seven of New Jersey Guard folks who were injured in the same firefight.

You do not meet braver people, and they are performing and sacrificing the same way our other troops are. They have a contingent risk, and they have all kinds of interference in their lives. Why are we not addressing some of the fundamental needs these individuals have that are at least the same as our civilian employees? I feel passionately that we need to respond to what has changed in how we operate our military forces as we go forward.

I understand the budgetary considerations. I know there are reasons that push this back, but we need to put faces to these individuals and understand it. By the way, there are good personnel management policies and if there are these earlier retirements people are not staying around longer than they would otherwise so that they could get the benefits they want to have and there could be a greater flow and help recruiting; lots of good reasons that are independent of the change in policy in activation and use of our Reserve Forces. It is something I have a hard time understanding.

I have some other things in here. We can talk about stop-loss orders and how that has impacted the lives of so many of the military folks who are extending their terms of duty. I think there are about 16,000 reservists who are under this new policy because of our needs as a nation, and those are perfectly reasonable. We are not arguing about whether that was the right or wrong thing to do. It needed to be done. It had to be done. It was an exigency that needed to be done, but we ought to reflect that in our policies. We need to change policies when circumstances have changed.

Finally, this is one of those things that the people who represent our military men and women in the Reserves

and Guard are absolutely almost 100 percent behind. The military coalition, including the Reserve Officers Association, Veterans of Foreign Wars, Air Force Sergeants Association, the Air Force Association, Retired Enlistment Association, Fleet Reserve, Naval Reserve Association, National Guard Association, all of these people feel strongly that this is one of their top priorities.

There are others. We can talk about health care, the demonstrations of it and a number of issues. But why are we staying with a 50-year-old policy that is not even as reflective of retirement needs of people who are risking their lives to protect Americans as we are with our civilian employees? I am not criticizing what our policy is for our civilian employees in the Federal Government. We ought to reflect the fact that we are using these folks on a regular basis. The deployments are up. The numbers are up and they are serving at great risk for us.

I think this is one of those things we can do to actually change the lives of their families and reflect those sacrifices they are making for us, and that is why I am asking for the support of the Senate with regard to changing the retirement age.

Mr. NELSON of Florida. Mr. President, will the Senator yield?

Mr. CORZINE. Yes.

Mr. NELSON of Florida. Mr. President, how much time does the Senator have remaining?

The PRESIDENT pro tempore. There is 4 minutes.

Mr. NELSON of Florida. Mr. President, if the Senator will yield, I say to the Senator that I think he is right on. In my State of Florida, we have the same experience and the very same statistics that he has pointed out with regard to New Jersey. This is not what was originally contemplated for the Guard and the Reserves, and because of their specialties, because there is not enough of the Active-Duty Force, they have become, in effect, a full-time active-duty force.

The good news is they are professionally trained warriors, as much as the Active-Duty force. The bad news is, this is not what they bargained for in the Reserves and the National Guard, because they have their own civilian lives. So I appreciate the Senator offering this amendment. I support it.

If the Senator is finished with his comments, I will take 30 seconds and point out one of the differences between the Senate bill and the House bill on something we tried to address in 2001, after the debacle we had in the 2000 Presidential election in Florida, where there was an inconsistency of the application of State laws on to the counting of military overseas ballots in the Presidential election.

One of the things we did was start a pilot study for Internet voting of overseas military. There was some concern that fraud could be injected into Internet voting. So what we have done in

the Senate bill is still have a process but have it delayed to the 2006 and 2008 elections. The House bill on Defense authorization has done exactly the opposite and instead has cut out any kind of pilot study on Internet voting for overseas military.

I hope when we get to conference that we will insist on the Senate provision.

I thank the Senator for yielding.

The PRESIDENT pro tempore. The Senator yields for a question. The Senator from New Jersey has the floor.

Mr. CORZINE. I yield the floor.

The PRESIDENT pro tempore. The Senator has 2 minutes remaining.

Mr. WARNER. Mr. President, if I might just speak personally, I served in the Reserves some 12, 14 years and we knew what we had as our obligation when we signed up. That is the way it has been throughout our contemporary military history.

I share with the Senator how the Reserves and the Guard with their families have borne the brunt of battle in the same way as the regular forces, but bear in mind that the regular forces, which are given an option for early retirement, have to put in a minimum of 20 full years of obligated service. If we continue to narrow the differences between the pay and benefits for the Reserves and Guard and the Regulars, pretty soon people will say, let's opt for the Reserve or the Guard rather than spend 20 years of our lives to gain those benefits that Congress accords our people.

For that reason, I intend to raise a budgetary point of order with respect to Senator CORZINE's amendment on that very point. The amendment would allow eligible reservists to be able to collect retirement pay at age 55 instead of age 60. That would be an extremely costly change to implement. CBO has estimated it would increase mandatory spending in 2005 by \$1.7 billion. It would cost \$8.2 billion in mandatory spending over the coming 5 years and \$16 billion over the coming decade. Those are very major costs.

I bring to the attention of my colleagues that already in this bill we have added, by way of amendments, an additional \$1 billion in direct spending, and discretionary spending is at \$10 billion. So this bill goes up and up and up, and it is going to the point where it might well become so top heavy we cannot persuade our colleagues to support it and/or the administration as they look at the overall budgetary aspects of our financial projections for defense.

Keep in mind there are additional costs that are incurred—I did not hear the Senator address these—regarding health care for retired reservists that would be caused by this amendment. The amendment would have the effect of lowering to 55 the age at which a reservist retiree or his or her dependents would become eligible for medical coverage under TRICARE.

The Department of Defense estimates that the added costs to the defense

health care program could be as high as \$427 million in the first year should this matter be enacted, and \$6.8 billion over the coming 10 years. So both the retirement costs as well as the health care costs have to be added in if the Senate wants to look at the total financial impact of the initiative by my friend from New Jersey.

The Senate considered this identical amendment less than a year ago. Senator CORZINE once before introduced it during debate on the Emergency Supplemental Appropriations Act for Iraq and Afghanistan in October of 2003. The amendment fell on a budgetary point of order failing to achieve even 50 votes.

The Department of Defense has voiced strong objection to the amendment, citing studies and experience showing that lowering the Reserve retirement age to 55 would not help the services meet recruiting, retention, or force management objectives. DOD advises that, in fact, 80 percent of those who would benefit from this amendment have already retired.

Let me be clear that my opposition to this amendment does not reflect any implied criticism of the patriotic service being rendered by the Reserve and the Guard. Once again, however, we are seeing a proposal to change a well-established condition of military service, one all of those who go into the Reserves fully understand at the time they commit to service. Should this amendment be passed, we are incurring an enormous financial impact on this bill and the outyear budget of the Department of Defense.

In response to the claim that the greater reliance on the Reserve component calls for increased rewards, please keep in mind the enhanced health care benefits included in this legislation already as a result of the work of Senator GRAHAM of South Carolina. Consider also Senator HARRY REID's amendment on current receipt and Senator LANDRIEU's pending amendment, should that be adopted, that would enhance the Survivor Benefit Program. That is a broad range of benefits going to the Reserve and Guard and others. These amendments equally benefit the Guard and Reserve retiree population, the same individuals who would benefit from the pending amendment of the Senator from New Jersey.

As I say, we currently added over \$10 billion in discretionary spending to this legislation on top of benefits we also increased in the underlying bill itself in committee.

In response to the assertions that the role of the Guard and Reserve is changing and the enhanced retirement benefits are needed, let me point out there is in the underlying bill a requirement for a commission on the National Guard and Reserve that would have the responsibility of examining the roles and missions of the Guard and Reserve, and specifically to "assess the adequacy and appropriateness of the compensation and benefits currently provided for the members of the National

Guard and reserve components" and "to assess the effects of proposed changes in compensation and benefits on military careers in both regular and reserve components."

I anticipate that this commission will provide important insights to the Congress in the continuing debate over these issues.

In summary, the Department of Defense simply cannot continue to absorb mandatory spending directives that drive the cost of military personnel, both Active and Reserve, to levels we simply cannot support at the same time we are trying to modernize, and also the operational costs of the military today.

I urge you to reject this amendment on the point of order.

At this point in time, the pending amendment offered by Senator CORZINE increases mandatory spending and, if adopted, would cause the underlying bill to exceed the Armed Services Committee's section 302 allocation. Therefore, I raise a point of order against the amendment pursuant to section 302(f) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER (Mr. ENZI). The point of order is not timely until all time has expired.

Mr. WARNER. I realize that. I thought all time had expired on the other side. I was about to yield back my time. Is that not correct?

The PRESIDING OFFICER. The Senator from New Jersey has 1 minute 51 seconds remaining.

Mr. CORZINE. I will yield back my time, but pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of the act for purposes of the pending amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. WARNER. The pending amendment offered by the Senator increases mandatory spending if adopted and would cause the underlying bill to exceed section 302. Therefore, I once again raise the point of order against the amendment, pursuant to section 302(f) of the Congressional Budget Act.

I yield back my time and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

The PRESIDING OFFICER. The vote will occur at the appropriate time. The Senator from Michigan.

Mr. LEVIN. The vote will then occur on the waiver?

Mr. WARNER. That is correct. And the votes, again, for colleagues who might not have followed the majority leader and Democratic whip's comments, are to be stacked at approximately 11:30, at which time we will proceed to all votes.

Will the Chair advise the Senate with regard to the next amendment in order and the time allocated to each side?

The PRESIDING OFFICER. The Senate will now consider a McConnell amendment and a Kennedy amendment, No. 3377, concurrently, for a total of 30 minutes equally divided.

Mr. WARNER. Mr. President, I did not hear. I was unable to hear the Presiding Officer. Will he repeat it.

The PRESIDING OFFICER. We now go to the McConnell and Kennedy amendments, concurrently, with 30 minutes equally divided.

Mr. WARNER. I thank the Chair.

AMENDMENT NO. 3472

The PRESIDING OFFICER. The clerk will now report the McConnell amendment which has not yet been reported.

The legislative clerk read as follows:

The Senator from Virginia (Mr. WARNER), for Mr. MCCONNELL, proposes an amendment numbered 3472.

The amendment is as follows:

On page 247, between lines 13 and 14, insert the following:

**SEC. 1022. REPORT ON THE STABILIZATION OF IRAQ.**

Not later than 120 days after the date of the enactment of this Act, the President shall submit to the congressional defense committees an unclassified report (with classified annex, if necessary) on the strategy of the United States and coalition forces for stabilizing Iraq. The report shall contain a detailed explanation of the strategy, together with the following information:

(1) A description of the efforts of the President to work with the United Nations to provide support for, and assistance to, the transitional government in Iraq, and, in particular, the efforts of the President to negotiate and secure adoption by the United Nations Security Council of Resolution 1546.

(2) A description of the efforts of the President to continue to work with North Atlantic Treaty Organization (NATO) member states and non-NATO member states to provide support for and augment coalition forces, including efforts, as determined by the United States combatant commander, in consultation with coalition forces, to evaluate the—

(A) the current military forces of the NATO and non-NATO member countries deployed to Iraq;

(B) the current police forces of NATO and non-NATO member countries deployed to Iraq; and

(C) the current financial resources of NATO and non-NATO member countries provided for the stabilization and reconstruction of Iraq.

(3) As a result of the efforts described in paragraph (2)—

(A) a list of the NATO and non-NATO member countries that have deployed and will have agreed to deploy military and police forces; and

(B) with respect to each such country, the schedule and level of such deployments.

(4) A description of the efforts of the United States and coalition forces to develop the domestic security forces of Iraq for the internal security and external defense of Iraq, including a description of United States plans to recruit, train, equip, and deploy domestic security forces of Iraq.

(5) As a result of the efforts described in paragraph (4)—

(A) the number of members of the security forces of Iraq that have been recruited;

(B) the number of members of the security forces of Iraq that have been trained; and

(C) the number of members of the security forces of Iraq that have been deployed.

(6) A description of the efforts of the United States and coalition forces to assist in the reconstruction of essential infrastructure of Iraq, including the oil industry, electricity generation, roads, schools, and hospitals.

(7) A description of the efforts of the United States, coalition partners, and relevant international agencies to assist in the development of political institutions and prepare for democratic elections in Iraq.

(8) A description of the obstacles, including financial, technical, logistic, personnel, political, and other obstacles, faced by NATO in generating and deploying military forces out of theater to locations such as Iraq.

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

Mr. KENNEDY. Mr. President, as I understand the floor managers, we have a half hour, and that time is divided between the Senator from Kentucky and myself. We have two different amendments. At some time at the leadership's discretion we will have an opportunity to vote on those. The asking for the yeas and nays still is yet to be done, but it is certainly my intention to do so.

Mr. President, I yield myself now 5 minutes.

I want to address an issue that came up yesterday just prior to making the comments on my amendment because I do think it is of importance, as we are reaching the final hours in the deliberation of the Defense authorization bill, to make a comment on a particular amendment. This is effectively the Leahy amendment which is supported by a number of the members of the Senate Judiciary Committee.

I understand there is a reluctance on the other side of the aisle among Republican leadership—not necessarily the chairman of our Armed Services Committee but of the Republican leadership—voting on it.

I want to mention very briefly as we are coming into the final hours of the consideration of the legislation, the importance of the consideration of that particular proposal. I am very concerned that our Senate Republican friends are effectively stonewalling the release of the Justice Department memorandum on the torture of prisoners, and specifically the majority leader has filed cloture on the Defense bill in hopes of preventing a vote on an amendment that would require the release of the Justice Department documents.

The administration released a handful of documents yesterday, but the materials are far from complete. This is not a partisan issue; it is a constitutional issue.

It is required by our oath of office to preserve, protect, and defend the Constitution of the United States. The administration has shown a stunning disregard for the law and the usual rights of oversight, resorting time and time again to saying that we are at war.

We are not under martial law in this country. The laws and the Constitution are not suspended because we are at war. The actions of the administration

and questionable advice by the Justice Department contradict the founding principles of this country. Our country is not above the law. The President is not above the law. The Attorney General is not above the law. The Justice Department is not above the law. The Bush administration cannot continue to refuse to reveal memoranda because we are at war and because he does not want to. This is a precedent that could dangerously undermine our system of laws and government as we know them.

I believe the Senate itself is on trial. We have a constitutional and an oath of office responsibility to prevent this stonewalling of required accountability. If we look the other way and refuse to take action, then we are complicit in the gross violation and abuse of all that makes this country great.

America's Constitution is not a document of convenience to be followed only when we feel like it. It represents our best ideals as a democracy and protects our freedoms. I hope the Senate will uphold the Constitution and demand accountability for the prison abuses that are so contrary to all we stand for as a nation. I will have more to say on that later in the day.

The amendment which I offer on behalf of myself, the Senator from West Virginia, Mr. BYRD, the Senator from Michigan, Mr. LEVIN, Mr. LEAHY, and Mr. FEINGOLD, is a very simple amendment. Effectively, we understand that the President now is going to the EU and then to NATO. During that period of time, he will be asking our international allies and friends to participate and help offload some of the very heavy burden that Americans are bearing in Iraq, the most notable being the loss of life which exceeds 95 percent of the lives that are lost, and over 96 percent in terms of the casualties and the extraordinary expenditure of American taxpayers' funds, what I think will come out well in excess of \$4 billion a month.

We also ought to know the scheduling in some detail for the development of internal security—primarily police—and what is being done inside the country and outside the country, and what is being done in terms of other countries around the world in helping, assisting, and offloading the burden on American service men and women who are caught in the bull's eye over in Iraq.

Many, including myself, find it is going to be extremely difficult to remove the concept of occupation as long as we are the only ones who are involved in the security issues in Iraq.

This amendment is the result of efforts by the President. We are asking for a list of countries that are committed to deploying military and police forces. With respect to each country and the level of such deployment, we are asking for the scheduling of providing such assistance—that would be economic aid—and effectively when that assistance will come.

As a result of the President's efforts, we want to know the number of police and military forces in Iraq that have been recruited for policing and for the military—the numbers of members of the police and military forces that have been trained. We want a description of the anticipated U.S. military force posture in the region during the next year, including the estimate—I underline the word "estimate"—of the numbers of members of the Armed Forces that will be required to serve in Iraq during the next year. That is what we are asking for, effectively.

We are talking about planning, which the military does. Every year they have to submit a 5-year plan in terms of troops for the military. They have the Quadrennial Defense Review where they talk about the planning in terms of the troops and the needs in terms of the troops.

What we are trying to find out is what is the best estimate. We are asking for the estimate, and we are asking for that estimate 30 days after the bill becomes law. We hope this bill is going to come to a conclusion in the next 2 days. It then will go to conference. All of us are very hopeful and expect it will be concluded prior to the time of the summer recess. Then the administration will have 30 more days in order to make this kind of estimate and report. We will certainly know, since the President will return in the next several days, we will be able to make that kind of estimate.

Then we are asking: All right. Give us that information in 30 days, and level with the American people. Let the American people know. People ask: Why should we do this? It is because we have 140,000 American reasons to do it. That represents the American troops over there. That is the reason to do it. The American people are entitled to an estimate within 30 days, and then the follow-on and update of that in 6 months.

Americans who have members of their families serving over there are entitled to this information. The American people are entitled to this information.

There is ample precedents where we have required similar information in the Defense authorization—before going into the Balkans.

This is a matter of estimates. It is a matter of information. It is a matter of giving the American people the best information we have.

We have heard all kinds of estimates over all periods of time. We heard estimates yesterday by Mr. Wolfowitz talking about the American forces may be in there for years.

The American people are entitled to know what exactly this administration and this Defense Department, to the best of their information, can provide and should provide for the American people.

It is a simple amendment. It helps establish some benchmark for which we can measure the kind of progress we

are making in terms of help and assistance from other countries around the world—not only in terms of getting support for troops and financial support but also help in assisting and getting information to the American people with regard to the development of police forces and the training of those forces.

Those are essential elements in terms of Iraqi policy. The American people are entitled to this.

I withhold the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Kentucky.

Mr. McCONNELL. Mr. President, the Kennedy amendment is little more than an effort to undermine the President and further the myth that our efforts to bring stability and democracy to Iraq are somehow unilateralist.

It is past time for some Senators to stop pretending that we are "going it alone" in Iraq. Neither the liberation of Iraq nor our efforts today could be characterized by anyone with a rudimentary understanding of mathematics as unilateral.

To begin with, the United States was merely a part of a coalition of 19 countries that toppled Saddam Hussein and liberated Iraq. In contrast, the United States joined only 16 other nations during World War II.

Nineteen is more than one. It is more than a couple. It is more than a few. It is a lot. Nineteen countries are more than most Americans will visit during their lifetimes.

The liberation of Iraq was less unilateral than the French opposition to it.

Since liberation, the administration has worked to bring more nations into Iraq to help stabilize and reconstruct that country. Currently, 34 nations are providing military and security forces to assist the Iraqis in defending their newly free country from the insurgents and terrorists.

The international commitment to Iraq has grown. Today the South Korean President announced that his country will push ahead with the deployment of 3,000 soldiers, despite the savage beheading of a South Korean citizen in Iraq this very week.

Although the junior and senior Senators from Massachusetts have both diminished the role that NATO countries are playing in Iraq, it is worth noting that 17 of these countries are members of NATO. NATO is involved in Iraq. It is also involved in Afghanistan. Both efforts are integral to our global war against terrorism.

Currently, 6,000 NATO troops from 25 nations are participating in the International Security Assistance Force in Afghanistan. There are over 8,000 foreign troops there, representing over half of the 15,000 non-Afghan forces in Afghanistan.

Now, the President's critics argue that NATO should be more involved, that the international community should be more involved. We all wish we had more help in Iraq. I wish we had



more help in Afghanistan. I applaud the President's recent efforts to secure passage of a new Security Council resolution that endorses the new Iraqi government's democratic transition and to encourage NATO to provide greater assistance. Predictably, Jacques Chirac opposed a NATO greater role. Given that NATO operates on the basis of consensus, Chirac's unilateral opposition will likely block NATO authorized deployments.

There are two principle barriers to greater international participation. It is important to focus on this. First, a number of countries, frankly, did not want democracy to take hold in Iraq. They do not like the idea that Iraq may become a democracy. Some nations are threatened by the march of freedom.

Mr. WARNER. Mr. President, I am going to ask the Senator to yield momentarily to the managers for the purpose of a unanimous consent request, which is concurred in by the leadership, without charging the time against the debate of this amendment.

Mr. President, on behalf of the leadership, I submit the following request: Currently, we are debating five votes with the understanding that at the conclusion of those votes, and possibly yielding back some time, a sequence of five votes will commence. I am now asking unanimous consent that sequence of five votes be delayed until 1:45 and that at the conclusion of the debate on the five scheduled votes, pursuant to regular order, we return to the first pending amendment at the desk, which is the Bond amendment, and proceed to debate that amendment.

Mr. REID. Mr. President, reserving the right to object, we on this side express our appreciation to the two managers for this arrangement. It will be most helpful to everyone, and it will help us see the end of this bill. We will have other amendments after we finish the Bond amendment.

No objection.

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

The Senator from Kentucky.

Mr. MCCONNELL. Let me start by saying there are two principle barriers to greater international participation. First, there are a lot of countries that did not want democracy to take hold in Iraq. They are not democratic themselves, and they do not want any democracies in the neighborhood.

Second, some nations are threatened by the march of freedom. Others had financial interests in the former Saddam Hussein regime. Some nations would not contribute troops unless we were to cede control in Iraq to the U.N., a prospect most Americans recognize as a dangerous fantasy. At such a price, their assistance is not worth the tremendous risk placing American security and Iraqi democracy in the hands of the U.N. entails.

Second, many countries that want to help simply lack the resources to help. As appreciative as we are of NATO's

contributions, we are also cognizant of its limitations. European nations spend on average about 2 percent of their gross domestic production on defense. Of that money, a majority is spent on personnel costs and benefits. Relatively little is spent to modernize or sustain the equipment, weapon systems, and logistic capabilities of NATO militaries.

Many NATO countries cannot generate sufficient forces or sustain their deployment outside of the European theater. They lack the weapons, the aircraft, the logistics, transportation, and supply capabilities the United States has. Because of these limitations, many nations have decided to contribute to Iraq's future by providing economic, humanitarian, or other forms of assistance to the liberated Iraqis. According to the Department of the Treasury, the 10 largest donors to Iraq have offered nearly \$8 billion in assistance. In addition, 29 donors have offered hundreds of millions more in financial aid, and 16 more have offered in-kind assistance.

Even if significantly more international troops could be deployed to Iraq, their deployment would not be a substitute for the long-term security needs of that country. These needs can only be met by Iraqi security forces.

There are clearly problems and challenges. The Iraqi security forces need training, they need equipment, and we will be providing it. We will be recruiting, training, and equipping Iraqis to defend Iraq from external attack and from internal subversion. These Iraqis, far more than foreign troops, will determine the future of that country.

The long-term solution to Iraqi security does not lie with the U.S. military. It does not lie with the U.N. or with NATO. It lies with the Iraqi people. We must be committed to supporting them and their efforts to bring stability and security to their own country.

I commend the soldiers of the U.S. military and those 32 other nations currently serving in Iraq for their brave efforts to bring peace to a troubled land.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we are all grateful for the participation of other countries around the world in Iraq. But the facts remain, when all is said and done, the estimate by the Defense Department is that 96.9 percent of the casualties are U.S. forces and 97 percent of nonhostile casualties are U.S. forces. We are grateful for the other countries, but the burden is on the U.S. forces.

I will mention what the difference is between the amendment of the Senator from Kentucky and my amendment, our amendment. There are only two basic differences. One is the number of reports. We have three reports. He has one report. And the timing of that report. The other difference, the major difference, is we are asking for esti-

mates of the number of American troops that are going to be there. The American families are entitled to that information. The families who have service men and women over there, whether they are in the Regular Army, Reserves, or Guard, are entitled to an estimate. They ought to be able to get an estimate. It is amazing that the Senator from Kentucky will not even include an estimate about the number of American troops that are going to be there. Not even an estimate.

Mr. WOLFOVITZ stated yesterday, when he testified in the House, in response to Mr. SKELTON, that, No, we are not stuck. The U.S. strategy in Iraq is clearly to develop Iraqi forces.

The Senator from Kentucky and I agree, we are asking for progress and estimating the progress in developing the security force and the police force. We agree with that. But he said the U.S. strategy in Iraq clearly is to develop an Iraq that can take over security from U.S. and allied troops. That is the policy.

What is wrong with asking the estimated time? What in the world is wrong with asking how long will it take, and get us a report 30 days after this bill? If that will not be accurate, give it to us 6 months after that. If that does not help, give us 6 months after that. Why in the world is there a reluctance to level with the American people about the amount of forces we are going to have over there?

The Senator from Kentucky includes reporting on the amounts of resources that will come from other countries. He includes in his amendment the training of the personnel, the security personnel, the police force. He gets a report on that. Why in the world do we prohibit the families who are serving over there, and the American people, from having an estimate about the amount of troops going over there?

Now we had that. We did that before. This is not something that is enormously new. In the 1995 Defense authorization bill, Congress required a report that had to include 11 elements, including: estimates of the total number of forces required to carry out the operation, estimates on the expected duration of the operation, an estimate of the cost of the operation, and an assessment of how many Reserve units would be necessary for the operation.

That was passed here. I do not know whether the Senator from Kentucky voted against that. I do not hear him saying: We had that in 1995, and I voted "no" because we can't do that sort of thing here.

We have done that before in Bosnia. Is Iraq less important than Bosnia? We were prepared to do that in Bosnia, and it got the virtual unanimous support of the Members of this body at that time. And we are not prepared to do it in Iraq? I am confused. I do not understand.

What possibly is the justification for not leveling with the American people on the best estimate this administration has on the number of troops we

are going to have over there? We are not saying: Give us a number, and then withdraw our troops; give us a number and then come back to Congress and tell us if you are going to need more troops. We are not asking that. Estimates, estimates, estimates.

We have the President who is going over to meet with NATO, with allies abroad. He is going to obviously, hopefully, ask others to participate because they clearly have an interest. They clearly have some responsibility. They have not recognized it. I wish they would. But clearly they have to understand they have an interest in the security of that part of the world, and they ought to be participating.

We know the French were all too interested in finding out and participating in the oil issues, and it was obviously indicated to American representatives at the U.N. that they did not think we were transferring sovereignty unless we were going to transfer over to the Iraqi ministers the ability to have independent European oil participation in the development of the oil resources over there.

We want them to be in there with regard to offloading the burden on American troops and helping and assisting in terms of developing the security and the police. We ought to know, and the American people ought to know, whether they are willing to do that.

The President is headed over there. All we are asking for is estimates. It is amazing to me, given the past precedents, that we are unwilling to share that kind of information with the American people. I think the American people are entitled to it.

That is what our amendment does. It is the principal difference with the McConnell amendment. When you come right down to it, that is the principal reason we have an alternative out here, because the opposition refuses to share with the American people estimates, estimates, estimates on the number of troops. I think the American people are entitled to it.

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

The PRESIDING OFFICER. Who yields time?

If neither side uses time, time will be yielded from both sides equally.

Mr. KENNEDY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has a minute and a half.

Mr. KENNEDY. Mr. President, I yield myself the minute and a half.

I would mention, in his May 24 speech on Iraq, President Bush said:

[W]e'll maintain our troop level at the current 138,000 as long as necessary.

On May 4, General Swartz, of J-3 Operations, said: "the current plan" and "what we're working toward" is to keep the current level of deployments "through '05."

General Abizaid, on May 19, before the Senate Armed Services Committee, said:

[T]he force levels will stay about what they are, I think, until after the elections in Iraq.

Those elections are scheduled in Iraq for December or January.

We have had estimates by individuals. Why not share and give official estimates to the American people? That is the principal difference. I am still stunned by the unwillingness to share that kind of information with the American people.

I reserve any time I have.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I once again wish to emphasize to our colleagues, in the past the Committee of the Armed Services most particularly, and I think the Congress in general, has refrained from requiring the Department of Defense to provide detailed planning, manpower, or cost estimates for future military operations.

The very nature of any military operation is such that the planners do their very best. They establish parameters. There are some great quotes, which I cannot bring to mind, but in war is the unexpected. You never can know for certain what your requirements will be. Certainly in trying to project that into the future, much less the immediate days or weeks or months ahead—force level projections and cost projections or estimates based on assumptions—conditions can change so quickly, for better or worse, rendering such estimates of very little value.

So the Senator has put forth an amendment. In the course of our deliberations with the committee staff and this manager, and with the Senator and others, much of it is very useful and beneficial. There was a lot of thought given. We wanted to accept the amendment with slight modifications.

We have now, for example, at 3 o'clock this afternoon the Secretary of State coming up to brief the Senate. That is consistent with how the executive branch is trying to be very forthcoming, and the Department of Defense, the Department of State, and others, in providing information in briefings about the stabilization and reconstruction efforts in Iraq over the past year, providing numerous updates in a variety of areas, at least on a weekly basis. General Abizaid has been very clear about his force requirements for the next 6 months, reducing the need for what we call a sort of quick-fix report as proposed by the amendment by the Senator from Massachusetts.

The McConnell amendment requires a comprehensive, balanced report within an appropriate and feasible time period that enables the Congress to perform its oversight responsibilities. Therefore, I think this is a question of reasonableness, and that reasonableness is predicated on forthcoming estimates and forthcoming briefings by the administration on a broad range of issues that relate to the operations our military forces are courageously performing worldwide.

Therefore, I strongly urge our colleagues to support the McConnell amendment.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield the remaining time to the Senator.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, how much time is remaining?

The PRESIDING OFFICER. There is 30 seconds.

Mr. LEVIN. Mr. President, in the fiscal year 1995 Defense Authorization Act, we did precisely the same thing Senator KENNEDY is asking. I am going to quote section 2(B)A. This is relative to Bosnia at that time.

The report must include an estimate—"an estimate"—

of the total number of forces required to carry out such an operation, including forces required for rotation base.

There is good precedent for precisely what Senator KENNEDY is doing in terms of requiring an estimate. The troops deserve it. The Nation deserves that estimate.

Mr. WARNER. Mr. President, how much time is remaining on our side?

The PRESIDING OFFICER. There is 3 minutes.

Mr. WARNER. Mr. President, I simply say to my colleague from Michigan, how well you, and having been privileged to serve these many years together, recognize that the Balkan situation was one that had a measure of predictability that in no way parallels the complexity of the mission we are carrying out in the Central Command AOR. There are stark differences between those military operations.

So, Mr. President, at this time I urge colleagues to vote for the McConnell amendment, which we think is very reasonable. It could be viewed as a reinforcing of the Senator's desire to get the information we share with him in many respects—important to the Senate.

I yield back the time and ask the Chair to move to the next amendment.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Do the Senators wish to order the yeas and nays on both pending amendments?

Mr. WARNER. That is correct.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. By arrangement of the managers, there will be side-to-side votes. The McConnell amendment first, followed by the Kennedy underlying.

The PRESIDING OFFICER. The yeas and nays are now ordered on both amendments.

AMENDMENT NO. 3353

The PRESIDING OFFICER. Who yields time?



Mr. LEVIN. I believe Senator REED controls the time on his side.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I yield myself 8 minutes.

My amendment would condition the acquisition of interceptors 21 through 30 for the ground-based midcourse national missile defense system on the implementation of operational evaluation and testing under the auspices of the director of testing in the Pentagon.

I will try to give a brief explanation of where we are with this system that is to be deployed. It is a combination of existing elements and some brandnew technology. The existing elements, first, the defense support system, a satellite system, is a cold war system designed to pick up the initial lift-off of missiles. That is in place. Then there is a group of Aegis ships that are out around the potential threat area of North Korea. That is a relatively new application of these ships. They were designed to intercept and detect cruise missiles and aircraft. Now we are attempting to expand that to track, at least partially, the flight path of an ICBM coming from a threat, specifically North Korea. Then there is the Cobra Dane radar, an older radar system. It is not particularly well adapted at discriminating, so it is therefore not the best radar we could have. The administration has canceled the X-band radar system, which is better. Then there are the interceptors with the kill vehicles on top.

The subject of this amendment is the interceptors. For many years, this ground-based system was designed to deploy 20 interceptors. Today, we are taking five for this deployment. But 20 was a rather significant number for technology that has not yet been proven. What the administration did this year is say, well, we want to go beyond that 20; we want 40. We want to buy 10 more, 21 through 30, and have long lead-time acquisition funds for 31 through 40. Well, the Congress in its wisdom already terminated the long lead time for 21 through 40, but we still have to budget this money for 21 through 30.

I don't propose to take that money away. I want to simply fence it, make as a condition to spend that money that this system will begin testing and evaluation. We had a vigorous debate about imposing this operational testing scheme. The result was now the Secretary of Defense is required to promulgate some criteria for operational testing and conduct these tests by October of 2005.

My amendment differs, and I think significantly so. It says we cannot depend upon the Defense Secretary's criteria and evaluation—a self-evaluation by the Missile Defense Agency. We need to get this program back into the traditional system of operational testing and evaluation, which is conducted by an independent agency in the Pentagon which designs, supervises the

tests, and makes sure the tests will do what we want to do: deliver to the field a system that actually works. I don't think it is unreasonable. In fact, I think it is entirely appropriate to say that before we buy these additional interceptors—10 more—we are at least in a situation where this rudimentary system has been entered into operational testing.

Let me specifically highlight the issue of the interceptors. The operation of the interceptor and kill vehicle is brand new. Neither has been tested in an interceptor test. We have not tried to fly them with a kill vehicle even against a target. Yet we are buying 10 more of them. It would be prudent to say let's wait and at least do a few tests with these new interceptors and kill vehicles. The new version of the kill vehicle, by the way, where the warhead would actually impact the incoming enemy missile, has never even been flight tested. We don't know what it will look like. In fact, problems with the kill vehicle have delayed the scheduled flight test from March until July 31 of this year; and, frankly, we are weeks away from that and it is entirely plausible that this would be delayed even further. So we are deploying a system in which we have not yet even tested in flight one of the most critical aspects of the system, let alone the fact that the rest of the system has been cobbled together by existing pieces of technology being used in new ways.

That is a strong argument, in my mind, to say how serious are we about saying this is deployment. But it is more compelling, in my mind, to say at some point we have to get operational testing and evaluation—not some improvised form by the Secretary of Defense being implemented by the Missile Defense Agency but a traditional system where the director of test and evaluation at the Pentagon does evaluation and testing. This amendment would do that. It would take no money away. It would simply say we cannot spend the money on the next 10 interceptors—21 through 30—until we have entered the traditional mode of operational test and evaluation. This amendment makes a great deal of sense. There are examples of how useful operational testing is.

The Patriot PAC-3 system—probably the closest analogy to this, even though it is a theater missile system—is designed to go against targets that are not as fast and don't leave the atmosphere. But it is the same hit-to-kill technology. In fact, I was bemused years ago when they would show the film clips of how successful we are in this new technology, and they would use PAC-3 film clips about the hit-to-kill technology.

The PAC-3 system was being tested developmentally. Then it went into operational testing and it failed four consecutive operational tests against a realistic target, one in which you try to simulate the conditions of battle-

field use. Even though it was successful in the developmental tests, it failed four consecutive operational tests.

Why are we buying missiles today that have the potential of duplicating the PAC-3 experience? Frankly, we could be in the unenviable position where the first time we try to fly this against a potentially real target, it fails. We have to have operational testing and the PAC-3 is a very good example. These operational tests are extremely useful in finally coming up with a system that is much more reliable.

So, as a result, I urge my amendment strongly. It doesn't take the money away. It simply lays out as a condition that we not spend it until we at least have operational testing. By the way, we are already buying 20 missiles.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I must say I am fortunate to serve on the Armed Services Committee with Senator REED and Senator LEVIN. Throughout the many years we have served together, we have had our honest differences of opinion. I don't mind sharing them. I enjoy our debates. It is constructive for the Senate. There is a process by which we go about it.

At some point, there has to be finality reached with regard to issues. I say, most respectfully, to my good friend from Rhode Island, the Senate has voted not once but twice, basically on the same issue raised by this amendment. I am reminded of Winston Churchill, one time in the depths of World War II, the early part of it in the Battle of Britain, when he went back to his old prep school and gave the famous speech saying, "Never, never, never give in."

Well, at some point, the Senate has to get on with its business. I think we have more than adequately debated the issues raised by this amendment. Nevertheless, I will take the time of my colleagues to carefully review it.

The Senate has already spoken on every single issue raised by this amendment. First, the testing. The Senate adopted the Warner amendment to require ballistic missile defense testing in 2005. That is the first Reed amendment. It rejected the testing approach which the Reed amendment puts before the Senate once again, an approach, I remind my colleagues, that the Pentagon's own chief testing official described as premature and not helpful to the program.

If the Reed amendment is adopted, it is just another prohibition in the program, possibly a gap in the production line, and all of those things end up in costly bills for the American taxpayers and disruption. We all know what happens when you break down and develop a system whereby you cannot predict with certainty as to how and when the units would be completed on production lines.

It comes down again to, Do you want to deploy a missile defense system or don't you? If you do, I suggest most respectfully to colleagues, let's accept the judgments that you have rendered and get on and not come back and back again and again on these same issues.

The Senate already rejected the Boxer amendment which would have halted the development. Do we want to halt production of missile interceptors for an extended period of time, a path that would increase costs, technical risks, and leave us vulnerable again to this threat where America stands defenseless to protect itself from an accidental or an intentional firing of a ballistic missile on to our territorial 50 States? That is the issue.

The Senate yesterday, after very thorough and, I thought, one of the better debates on this bill, presented by my distinguished colleague, the ranking member, Mr. LEVIN, rejected the Levin amendment which would have done basically the same thing as the Reed amendment. It would have resulted in a disjointed, disrupted program.

I suggest the Senate should not now adopt an amendment that would fence 2005 funds for additional missile defense interceptors until a testing requirement is completed, when it has already imposed a realistic testing requirement in 2005, explicitly rejected the kind of testing proposed in this amendment, and explicitly rejected the delays, costs, and disruptions that would result from withholding the funding needed to proceed with the testing and fielding of missile defense interceptors.

I most respectfully urge my colleagues to sustain the decisions that have been debated and voted on within the past few days by this Chamber.

I reserve the remainder of my time.

Mr. SESSIONS. Mr. President, I rise in opposition to the Reed amendment.

The amendment before us covers ground that was considered and already rejected by the Senate in the three missile defense amendments offered by Senators BOXER, REED, and LEVIN.

The amendment Senator REED offers today uses the same approach to testing proposed in his amendment that we considered last Thursday and that the Senate rejected. But his amendment today has the additional disadvantage of imposing a very significant cost—to the missile defense program and to our ability to defend the Nation from long-range missile attack. These costs are identical to those that the Senate rejected yesterday when we defeated the amendment proposed by Senator LEVIN.

Senator REED's amendment would prohibit expenditure of fiscal year 2005 funds for ground-based interceptors until initial operational test and evaluation is completed.

I would remind my colleagues that the Senate has already voted in favor of a Warner amendment to require re-

alistic testing of the ballistic missile defense system in 2005. Yet Senator REED is proposing, again, an approach which would require operational test and evaluation of the BMD system and prohibit the use of fiscal year 2005 funds to acquire additional missile defense interceptors until such testing is completed. This is precisely the approach that the Senate has already rejected and precisely the approach that even the Pentagon's own chief testing official believes is premature and unhelpful. The Senate has already spoken on the testing issue.

Furthermore, the amendment we are considering, if adopted, would do serious harm to the Nation's ability to defend itself from long-range missile threats. Just as with the Levin amendment yesterday, the Reed amendment would cause a break in production line for missile defense interceptors and unacceptable delays in the effort to defend our Nation from known and serious long-range missile threats.

Planning and conducting operational testing and completing the evaluation of such testing would take at least a year. During that year, no funding for the next 10 interceptors could be spent. Key manufacturing personnel would be lost, subcontractors would be lost, and knowledge of manufacturing processes would be lost. When a production line is broken, it has to be restarted. Rehiring and retraining workers, requalifying subcontractors, and reestablishing manufacturing processes would take additional time and a great deal of money. A production break would also increase technical risk to this program, since quality depends in significant measure on well-trained and experienced workers and well-qualified subcontractors and stable manufacturing processes.

Loss of these funds for just a year could result in a delay in fielding these interceptors of nearly 3 years and a 4- to 5-year gap between fielding the 20th interceptor and 30th interceptor. Restarting the production line would incur a cost to the taxpayer of more than \$250 million. Some Senators may argue that fencing funds is not a cut, but I would suggest that if the funds are lost for at least a year, there is not much difference between this fence and a substantial budget cut.

The threat more than justifies the need for additional GMD interceptors. That threat is here today. It was confirmed last year by the Director of Central Intelligence, in testimony before the Armed Services Committee, when he testified that the North Korea has a missile that can reach the United States.

The need for additional interceptors is based on the threat and all the evidence I have seen fully and clearly justifies the acquisition of the 10 interceptors in the budget request. Any significant slowdown in this effort would leave the ground-based midcourse defense element with a severely reduced inventory of interceptors by 2007 and

would leave our Nation vulnerable to North Korean and, potentially, Middle Eastern threats. Unfortunately, Senator REED's amendment, if adopted, will cause just such a serious slowdown.

Mr. President, the Senate has spoken already on all the issues raised in this amendment. I strongly urge my colleagues to be consistent and to oppose this amendment.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from Michigan.

Mr. LEVIN. Mr. President, I wonder if the Senator from Rhode Island will yield 2 minutes to me.

Mr. REED. I yield 2 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first, I wish to ask the Senator from Rhode Island a question. The Patriot PAC-3 experience he described where I believe there were four failures, did that not, in fact, lead to changes in that system?

The PRESIDING OFFICER. Without objection, the Senator from Rhode Island is recognized to respond.

Mr. LEVIN. I thank the Presiding Officer.

Mr. REED. Mr. President, it actually did lead to changes in the operational use of the system, and those changes were very valuable once deployed in a combat situation.

Mr. LEVIN. Mr. President, the question again is whether this Defense Department is going to obey the law or do they believe they are above the law. The law is very specific. It reads:

The Secretary of Defense shall provide that a major defense acquisition program may not proceed beyond low-rate initial production until initial operational test and evaluation of the program is completed.

That is the law. This Defense Department too often has decided it is above the law; it is beyond the law; it is not going to abide by the law. We have written a law for a purpose. Operational test and evaluation is required by law, not by the Secretary of Defense, but by the independent office that was created to do this testing.

That is the definition of initial operational test and evaluation. No exception has been made for that. We deployed some UAVs, but we did not exempt them from independent test and evaluation. We deployed airplanes, but we have not exempted them from this requirement. This would be the first system that would be allowed to proceed beyond low-rate initial production without that evaluation.

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

Mr. LEVIN. Mr. President, I ask for 1 additional minute.

The PRESIDING OFFICER. The Senator's time has expired. Twenty minutes was allocated and equally divided.

Mr. WARNER. Mr. President, we grant 1 additional minute over and above the time.

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

Mr. LEVIN. One final point in this minute. According to the agency's own papers, disclosures, the production rate capacity of these interceptors is one per month. That is the capacity. They are there. This is full-rate production. They are not at low-rate initial production anymore. The capacity is one per month. That is what they are doing now. That is their plan. Their plan is for one per month. The law says they cannot go beyond low-rate initial production without this independent evaluation.

That is what this amendment is about. It provides the money but says abide by the law, obey this law, there is a purpose for it—to make sure our weapons systems work.

I commend the Senator from Rhode Island for this amendment. It is quite different from any amendment that has been voted on before.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. ALLARD. Mr. President, how much time is remaining on this side?

The PRESIDING OFFICER. The majority controls an additional 5 minutes 20 seconds.

Mr. ALLARD. Mr. President, I request 3 minutes.

The PRESIDING OFFICER. Is there objection to 3 minutes being yielded from the majority? Without objection, it is so ordered. The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, I have to agree with my colleague from Virginia, the chairman of the Armed Services Committee. We have had this issue before us not only this year a number of times but last year a number of times, and even the year before that to one degree or another.

Whether it is intentional, the net effect of these types of amendments is it delays the programs and it adds to extra costs.

We have had a lot of debate on all these issues that have been in this particular amendment. I think it is time for the Senate to move forward.

I will point out in response to the question that was raised by my colleague from Michigan that we had testimony in the full committee from the chief tester who says he believes we are in full compliance with the law. I do not think anything else needs to be said. We have that testimony. It is on the record in the committee.

I urge my colleagues again to join both Senator WARNER and myself in opposing this particular amendment.

We do have some different testing procedures. That is because this is a different program, unlike the many other programs we have had. So we have to deal with it a different way.

The bottom line again is the chief tester is happy with the way it is progressing. He has had access to the program that has been unprecedented. He is satisfied with the cooperation be-

tween the program office and the test community. I have a letter, again, that I submitted for the RECORD in the past that indicates he is fully satisfied. I will read specifically from the letter. It says:

My office has unprecedented access to GMD, and I am satisfied with the cooperation between the program office and the test community. I will continue to advise the Secretary of Defense and the Director of MDA on the BMDS test program. I will also provide my characterization of system capabilities and my assessment of test program adequacy handling as required by Congress.

In my view, it is time we move on. In effect, when we go for the formal testing that is being advocated in this particular amendment, we add an extra year of delay. It breaks up the manufacturing lines.

We have had this discussion at a previous date. The net effect is subcontractors have to be requalified, workers need to be retrained, and then the manufacturing process has to be relearned. It takes time, up to 2½ years, and money—some have estimated as much as adding \$250 million to the cost.

So I ask my colleagues to join me and Senator WARNER in opposing this Reed amendment. It has the net effect of adding costs to the program, delaying the program unnecessarily, and we do have adequate testing now.

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

Who yields time?

The Senator from Virginia controls the remainder of the time of 1 minute 45 seconds.

Mr. REED. Mr. President, I ask unanimous consent for 1 minute.

The PRESIDING OFFICER. The Senator from Virginia has been recognized.

Mr. WARNER. I will accommodate the Senator from Rhode Island.

Mr. REED. I ask unanimous consent for 1 minute.

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

The Senator from Rhode Island.

Mr. REED. I respect the chairman and the chairman of the subcommittee who have engaged in this debate. The question to me is: Will this system work? We really do not know if it will work. If we do not know it is going to work, why are we buying 10 additional interceptors at a price of about \$500 million?

So this is not the same amendment, the amendment written over and over again. This is an amendment about scarce resources—will we devote them to these interceptors that are untested or will we devote them to other issues?

I point out that there is nothing in this amendment that slows up the program. There is nothing in this amendment that would take away funds. It simply says, let us get into an operational testing mode before we buy these additional systems.

Final point. This system has been plagued by delays, but they are technological delays. The reason we are not having a test—we did not have one in

March, and we are having it in July—is because this kill vehicle is not ready for such testing. There is nothing about our amendment or about our procedures. This is a hard technology, but let us make sure it works.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I thank the indulgence of the Presiding Officer. The time remaining on this side is?

The PRESIDING OFFICER. The time remaining is 1½ minutes.

Mr. WARNER. Fine. I believe our case has been made very clearly to our colleagues that these issues raised by the Senator from Rhode Island have been passed upon by the Senate in the preceding 3 or 4 days after very careful, conscientious, and deliberate debate. The issues are settled. We must come to resolution, no matter how strong our differences may be, and accept the judgment collectively rendered by the Senate in these votes.

I yield back the remainder of my time.

Mr. REED. I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. Mr. President, we will now proceed to the next amendment which Senator LEVIN will offer on behalf of a colleague, but I would like to ask for a brief quorum call so I can consult with the majority leader because we are making considerable progress in beginning to define what remains to be done and a course by which this bill can be completed today.

The PRESIDING OFFICER. Under the previous order, all time on the previous amendment has expired.

AMENDMENT NO. 3423

Amendment No. 3423 is now pending, and under the previous order 20 minutes has been allocated, 10 minutes on each side.

Mr. LEVIN. 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. LEVIN. 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. WARNER. Mr. President, we have on the floor now our distinguished and esteemed colleague, the former President pro tempore of the Senate, Mr. BYRD of West Virginia. My first request would be a unanimous consent to extend the time of this amendment from the current, as I understand it, 20 minutes?

The PRESIDING OFFICER. The Senator is correct.

Mr. WARNER. That we extend that to 40 minutes, equally divided.

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

Mr. WARNER. Thank you very much. I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from West Virginia.

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

The Senator from West Virginia.

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

The PRESIDING OFFICER. The Senator is recognized.

Mr. BYRD. I thank the Chair.

Mr. President, it is no secret that America's military forces are stretched thin across the globe. The relentless fighting in Iraq has exacted a heavy toll on the U.S. military, forcing thousands of American troops to face extended tours in a dangerous war zone. Stop-loss orders have prevented thousands more from leaving the military when their obligations have been fulfilled. America's men and women in uniform have gone far beyond the call of duty to meet the increasing demands that have been placed on them, and we owe them a great debt of gratitude.

In the face of such hardship facing America's military personnel, this is hardly a propitious time to arbitrarily expand U.S. military obligations overseas, and yet that is exactly what the bill in front of us does. In an effort to help the Government of Colombia launch a new offensive in its civil war against guerrilla insurgents and the drug trafficking that funds them, the Defense authorization bill substantially increases the number of U.S. military and civilian personnel authorized to support the operations of Plan Colombia in Colombia.

Plan Colombia is a 6-year antinarcotics initiative authorized by Congress in fiscal year 2000 to combat cocaine production and trafficking in Colombia. From the outset, many Members of Congress worry that United States intervention in Colombia's drug wars—even noncombat intervention—could serve to draw the United States into the thick of Colombia's longrunning civil war. In an effort to preserve congressional oversight and prevent mission creep in Colombia, Congress placed a cap on the number of U.S. personnel who could participate in Plan Colombia. Current law limits the number of U.S. personnel in Colombia in support of Plan Colombia to 400 military troops and 400 civilian contractors, for a total of 800.

This is a part of my statement. I believe it was in the year 2000 that we placed a limitation. Originally, the 800 was divided into 500 military and 300 contractors, making a total of 800. That limitation on the number is current. This bill, however, would double the number of military personnel authorized to participate in Plan Colombia, raising the troop cap from 400 to 800.

That troop cap is being doubled. The cap on civilian contractors would be increased by 50 percent, climbing from 400 to 600. This bill says let us put in a little more. Let us lift the number.

The increases reflect the number of military and civilian personnel requested by the administration to carry out a 2-year training and support operation in relation to an aggressive new counterinsurgency offensive being undertaken by the Government of Colombia called Plan Patriota. With the stroke of a pen, just like that—just a stroke of the pen—this bill would increase the number of U.S. civilian and military personnel authorized to be in Colombia to support Plan Colombia from 800 to 1400.

So we are just inching along, just inching along. That may seem like an insignificant increase to some, but I expect it looms large in the minds of U.S. forces who have seen their tours in Iraq extended or who have been prevented from leaving the military when their obligations have been fulfilled. The 800 military personnel who could be sent to Colombia under the proposal are 800 military personnel who would not be eligible to relieve American troops in Iraq, Afghanistan, or elsewhere. Before signing off on such a measure, the Senate should consider very carefully the ultimate goals of Plan Colombia and the amount of oversight Congress should maintain on the program.

I am offering an amendment. The amendment I am offering is an effort to address these considerations. My amendment provides a reasonable and sustainable level of support to continue Plan Colombia and to support Plan Patriota, but it limits the support to immediate needs, not presumed needs a year or two from now. Under my amendment, the cap on both U.S. military and civilian personnel would increase from 400 to 500 each, for a total limit of 1,000.

My amendment conforms with the House-passed version of the Defense authorization bill. The House bill caps the number of military personnel in Colombia at 500. The House bill does not address the civilian caps, but the State Department has determined it needs fewer than 100 additional contractors next year to support Plan Patriota.

Plan Colombia remains a volatile and dangerous mission. Three American civilian contractors operating in support of Plan Colombia have been held captive in the jungle by Colombian insurgents for more than a year. Five other U.S. civilians were killed as a result of aircraft crashes. Additional cocaine fumigation flights have been fired on, and since August 2003, two planes have been downed by hostile fire.

This is not the time, colleagues, and Colombia is not the place for the United States to ramp up its military commitment so sharply. Although the numbers may be relatively small, the mission in Colombia has been constantly increasing.

That is the problem. The mission in Colombia has been constantly increasing, evolving from a strictly antinarcotics campaign into an oper-

ation encompassing antiterrorism, pipeline protection, and an air-bridge denial program to intercept drug trafficking flights in Colombia.

A major infusion of additional U.S. personnel into Colombia will place more American personnel at risk and will increase the prospects of the United States being drawn ever deeper into Colombia's civil war.

The State Department has confirmed that it needs fewer than 100 additional personnel next year to accomplish its goals. The Defense Department has estimated that it needs no more than 158 additional personnel to support the second phase of Plan Patriota next year. Defense Department officials have also said they do not need a total of 800 personnel and do not anticipate a time when 800 military personnel would be in Colombia in support of the initiative. The Department is asking Congress to provide broad flexibility through an unnecessarily large troop commitment at a time when both human and financial military resources are severely limited.

I think Congress should take a more conservative approach to Plan Colombia and particularly to the involvement of U.S. forces in Plan Patriota. I am willing to authorize a modest increase in the number of military and civilian personnel for next year, but I believe Congress should review the progress that has been made a year from now before determining what the final number should be.

If the Pentagon cannot tell Congress how many troops it will need in Iraq a year from now, how can it say with such certainty how many forces it will need in Colombia 2 years from now?

The United States has spent the past 4 years training and equipping Colombian troops and flying cocaine crop eradication missions for the Government of Colombia. According to the Congressional Research Service, U.S. funding for Plan Colombia, since fiscal year 2000, totals approximately 3.7 billion bucks.

The administration has characterized the next 2 years as a "window of opportunity" to assist Colombia with its war against the insurgents. Now, that may or it may not prove to be true, but the burden of securing that window has fallen on—guess who?—Uncle Sam. That is where it lies, in the lap of Uncle Sam.

If the Government of Colombia is as committed to eradicating the drug crops and defeating the guerillas as the administration contends, then the Government of Colombia should take the lead in seizing this opportunity. Four years and \$3.7 billion into Plan Colombia, the United States should be on the verge of tapering down its commitment to Colombia, not sharply increasing it. Where are we going here? When is this going to come to an end?

Plan Colombia has ample flexibility built into it to allow the military to surge, if needed, to respond to emergencies such as search and rescue or evacuation of operation.

In addition, at the request of the administration, Congress has agreed to broaden routine exemptions to personnel-counting procedures, giving the Defense and State Department even greater flexibility in managing the number of personnel in Colombia.

Routine exceptions now include such activities as port calls, DOD civilian visits, certain military exercises, aircrew overnights as needed for weather, maintenance, or crew rest overlapped during deployment location, headquarter staff visits, and traditional commander's activities, just to name a few.

Instead of the United States committing more troops and more civilian contractors to Colombia than are actually needed, the Government of Colombia should increase the resources it is committing to Plan Patriota to mitigate the burden on the United States.

My amendment increases U.S. support for Plan Colombia, but it does so at a prudent level that allows the Defense and State Departments to commit the minimum number of additional U.S. personnel needed to assist the Government of Colombia in prosecuting Plan Patriota while maintaining necessary congressional oversight on Plan Colombia.

In recognition of the current sacrifices this Nation is demanding of its men and women in uniform, I urge my colleagues to support this amendment and to resist unwarranted and excessive increases in a level of military and civilian personnel that may be deployed in Colombia.

I yield the floor.

Mr. WARNER. Mr. President, my understanding is the Senator from Virginia has, under his control or his designee, 20 minutes; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. WARNER. I will take a minute or two and ask unanimous consent that the Senator from Alaska be recognized for such time as he may wish, followed by the Senator from Alabama, and then the distinguished Senator, Mr. COLEMAN, chairman of the Western Hemisphere Subcommittee of the Senate Foreign Relations Committee, who will manage the remainder of the time.

Mr. SESSIONS. If the Senator will yield, I will yield to Senator COLEMAN ahead of me.

Mr. WARNER. Very well. But I wish to speak for a few minutes.

I must oppose the Byrd amendment and urge my colleagues to do the same.

The provision in the underlying bill to raise the troop cap in Colombia from the current limitation of 400 military personnel and 400 contractors to 800 military personnel and 600 contractor personnel was recommended by GEN Hill, Commander, U.S. Southern Command, with the endorsement of the Department of Defense, Department of State and the National Security Council. This provision was unanimously approved during markup by the Committee with no dissenting discussion.

The United States has been assisting the government of Colombia—through Plan Colombia—for several years as Colombia continues its struggle against narcoterrorists.

During the course of this assistance, we have asked the Colombians to develop a comprehensive strategic plan for taking back their country. They have developed and begun implementing this plan, with our help.

During the course of this assistance, we have urged the Colombians to modernize their armed forces and become more decisive in their pursuit of the drug-financed insurgents who have terrorized their country for decades. The Colombian armed forces have gained confidence and stature and are forcefully and decisively carrying out increasingly sophisticated military operations with successful results.

Over the years, we have asked the Colombians to invest more of their own national treasure in defense, reduce drug cultivation, respect the human rights of their people. They have done so with very promising results. The Colombian armed forces are now the second most respected institution in Colombia, behind the Catholic Church, according to recent polling.

During the course of our assistance, we have asked the Colombians to be forthright about their future plans, requirements, and needs for additional assistance—they have been and that is why our regional commander and the administration asked for a modest increase in the troop cap, at the request of the Colombian government.

The regional commander has developed a prudent plan to provide additional planning and training assistance that will enable the Colombian armed forces to carry out the sophisticated, coordinated military operations that will allow them to successfully defeat the terrorists and end decades of terror and violence in Colombia.

Troop strength will not automatically double in Colombia, it will ebb and flow depending on progress in Colombia's overall strategy and the availability of U.S. troops to provide assistance.

U.S. troops will not be involved in combat operations. They will continue to work from secure sites, help train additional Colombian military units and help them plan and coordinate military operations.

We have a clear window of opportunity to help President Uribe and the people of Colombia help themselves and end this conflict, but we need this slight increase in assistance to help them realize this goal. Colombia has made great progress, by all measures, and deserves our support.

The Byrd amendment would limit our ability to provide the assistance Colombia has requested and our military commanders have recommended. A modest increase in troops and assistance now does not foreshadow an endless commitment of troops, money and sacrifice—quite the opposite—it offers

the opportunity to help Colombia end this conflict in the near future. Defeating the narcoterrorists in Colombia, as quickly as possible, is clearly in the national security interests of our Nation.

The Byrd amendment will complicate the ability of our military commanders and our diplomats to help Colombia end this terrorist insurgency as soon as possible.

I urge my colleagues to vote no on this amendment.

I assure my colleagues that the discussion by the Armed Services Committee to raise these caps was one we did not take lightly. We considered it with very deliberate care. We feel we did so consistent with General Hill, commander of the southern command, who came up and specifically briefed the committee on the needs.

The bottom line is the nation Colombia has come a long way in the past few years to reestablish itself as a pillar of strength in that Central American band of nations where there is such fragility in the stability of these governments. It stands out as the courage of a government overcoming the insurgents in their countries, beginning to have success. For a very modest increase in our military presence and contractor presence, we can ensure the forward momentum of this success.

It is an enormous force multiplier of benefit to the United States of America. Were this nation to slip back into a situation which enabled more and more exporting of drugs from that region, possibly through Colombia, the consequence would be a weakening of that government, and there would be multiple degrees of negative impact on our economy, much less crime and death associated with drugs. So for a small number of additional military personnel which the military carefully crafted, the United States benefits greatly.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I support the Armed Services Committee recommendation. It was also the administration's position that this cap on military personnel in Colombia be increased to 1,400. Senator BYRD's amendment reduces that to 500.

There has been dramatic success in the war on drugs in Colombia. I have spent a great deal of time trying to keep up with this. The President of Colombia, Mr. Uribe, deserves a great deal of credit. We should support his continued efforts. His efforts have caused terrorist organizations to come to the peace table.

If we were to reduce our support now, they would have no reason to stay at the peace table. More U.S. personnel will only move the process forward.

I do not think we should go back to limiting our assistance to the Government of Colombia, as suggested by my good friend from West Virginia. I personally spent time with the commander of the U.S. Southern Command, GEN James Hill, as did the

chairman of the Armed Services Committee. We were briefed, as were other members of the subcommittee, on the situation there. He has strongly urged us to support the administration's request to raise this cap.

It is my hope, depending on the circumstances here in the Senate, that a group of us can travel to Colombia this year and examine firsthand what is going on down there.

This country could be a beacon now against terrorism in South America. It is something we should support. We should not retreat from the war on terrorism. The increase to 1,400 is necessary to support this Colombian President, who has done so well, particularly against narcoterrorism.

I urge the Senate to support the request as it is stated in the Armed Services Committee bill, which is also the request of the administration. It certainly is the request of this Senator, who spent a great deal of time considering the problems in Colombia.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I rise in strong opposition to the amendment offered by the esteemed and greatly respected Senator from West Virginia concerning military and civilian personnel strength in Colombia.

I have been to Colombia, I have been to Bogota, and I have had a chance to personally visit with some of our troops that are doing training, and to visit with President Uribe on a number of occasions.

As chairman of the Foreign Relations Subcommittee on the Western Hemisphere, I believe the situation in Colombia is of paramount importance to the entire region. I must state very clearly this is not a civil war in Colombia. Colombia is not engaged in a civil war. Colombia, today, is engaged in a fight against narcoterrorists. That is what this is about. It is not about ideology anymore. It is about money. It is about drugs that are being used to fuel the insurgency. But this is not a civil war. I think that is important to understand.

If you reflect a little bit on the history of what has happened in Colombia, President Pastrana did everything in his power to try to negotiate a settlement. He even set aside a parcel of land, known as a "despeje," as a token of good faith, but it was to no avail. You see, the narcoterrorists had no interest in negotiating a political solution because, again, it is not a civil war. Their objectives were and remain to intimidate the public and to make money through criminal means.

Let me be perfectly clear, all three of the groups—the FARC, the ELN, and the paramilitary AUC—are all terrorist organizations in the eyes of the United States and must continue to be treated as such by the Government of Colombia.

During my last visit to Colombia, I was speaking to the Ambassador from

one of the Scandinavian countries who has been involved in trying to create some opportunities for peaceful negotiation. I said to him: Historically, in the past, there may have been a civil war here. There may have been those in some of these organizations who were carrying some ideological belief and fervor that somehow they could change the system of government in Colombia. But today you have a democratically elected President with overwhelmingly high approval ratings, I think around 80 percent. Anybody in this body would like to have those kinds of approval ratings. You have a very active opposition party, a very active democracy in Colombia.

Speaking to this Ambassador, he admitted: Yes, today it is about drugs, and it is about money.

That is what we are dealing with today. That is the passion. That is the common link of those who are engaged in a battle with the government. The top fundraising enterprise of all three of these organizations is drug trafficking. They also are involved in extortion, kidnapping, and intimidation. There are few, if any, legitimate political objectives. They are narcoterrorists.

In fact, this Senate has voted to treat the guerrillas as such. Expanded authorities passed by this Congress allow the U.S. to support the Colombians in their efforts against the insurgents, not just for the purpose of fighting drug trafficking, but also for opposing the terrorist insurgent threat. All three of these groups appear on the State Department's list of terrorist organizations.

As I said before, President Uribe, who enjoys a great deal of popularity in Colombia, was elected with a clear mandate—that the narcoterrorists can be dealt with only from a position of strength. They must be weakened militarily to the point where they abandon their enterprise.

Under the leadership of President Uribe, the tide has begun to turn. Kidnappings are down. Murders are down. The terrorists in many instances are laying down their weapons. Coca eradication has reached record levels. But the task is not yet finished.

It is important. It is not a matter of: Well, we have put resources into Colombia; when are we going to get it done? As we well know, in this country the battle about drugs and narcotics is an ongoing battle. It is something where what we have to do is maintain the pressure, maintain the commitment, maintain the consistency, and not send a signal that somehow we are putting a cap on it.

Again, the numbers we are talking about here are very minimal, whether it is the Armed Services Committee recommendation of increasing the military cap from 400 to 800 and the civilian cap from 400 to 600, with a total increase of 600, versus the distinguished Senator from West Virginia talking about 500. But the message is not minimal.

The understanding of this body of the importance of what we are doing in Colombia, and continuing to build upon success, is important. That is not minimal. What we do here will be heard in Colombia. It will be heard around the world. We have to do the right thing.

Under the Colombian Constitution, President Uribe is limited to one term in office. What this means is during the final 20 months of President Uribe's term, there is a limited window of opportunity to seriously weaken these groups and to move beyond this conflict that has devastated the Colombian people for decades.

That is why I believe the time is right to increase the cap, again slightly increase the cap, on the number of United States military and civilian personnel in Colombia who are assisting the Colombians. We are not talking about lifting the cap entirely. We are talking about increasing the number of military personnel who can be in Colombia at any one time to 800 and civilians to 600. I applaud the chairman for including this necessary provision in the underlying bill.

This is not a blank check. Human rights protections are still very much in place. The United States Government works only with Colombian security forces who have been thoroughly vetted. I am a strong believer in human rights, and in each and every one of my meetings with Colombian officials I raise the human rights issue. I talk about the importance that human rights has in this country and has for our support of what is going on in Colombia. Human rights protections must remain essential to our involvement in Colombia, and the Colombians understand that. President Uribe understands that.

Moreover, the activities of U.S. troops are limited. They are there to train the Colombians. Our troops will continue to operate from secure sites only and will not be exposed to combat.

United States activities in Colombia and the region will continue to deal with the nonmilitary facets of Colombia's crisis as well. We are supporting programs for internally displaced people. We are encouraging alternative crops so farmers are not growing coca and they can make a living for themselves and their families. We are supporting human rights and rule-of-law efforts across the board.

For anyone familiar with the situation in Colombia, it is clear President Uribe is bringing security, stability, and law and order to a country that so desperately needs it. Plan Colombia is a Colombian strategy to retake the country from the grip of narcoterrorists. United States support for Plan Colombia is predicated on a mutual understanding of what is at stake in Colombia, and a belief that the United States and Colombians can work together to address the crisis. We have a critical window of opportunity here to make a major push against narcoterrorists in our own hemisphere.



during these final 20 months of President Uribe's term.

When President Uribe was elected and sworn in, there were mortar attacks on his life. I think there have been about 10 to 15 attempts on his life. He is an extraordinarily brave individual. So often we look around the world and say: America will be there to support you, but you have stand up for yourselves. Colombians are standing up. They are saying they want to win this battle against narcoterrorism.

Ninety percent of the cocaine in this country comes from Colombia. We Americans—our kids, our families—have a stake in the success of what happens in Colombia. Again, this is the time. This is the place to send a strong signal that we will strengthen our efforts against narcoterrorism.

The risk is the risk of doing nothing, the risk of sending a signal that somehow we are going to cap this and limit our effort, that somehow this battle against narcoterrorism is a short-term, we-are-in-it-this-week and we-are-out-next-week approach. This is not about that. Again, we are not talking about a civil war. We are talking about working hand in hand with a government that is deeply committed, that has put its own troops on the frontline, that personally has made the commitment not just of fighting narcoterrorism but to economic reform, pension reform, a commitment to human rights, to the rule of law.

The right thing to do is to support the Armed Services Committee recommendation. The right thing to do is to reject the amendment of the distinguished Senator from West Virginia.

I yield the floor.

Mr. GRASSLEY. Mr. President, I rise today to express my opposition to Senator BYRD's amendment to Section 1052 which would cap the number of U.S. military personnel and civilian contractors operating in Colombia at 500 and 500, respectively. I support the current committee language that increases the caps to 800 and 600, respectively, because it will enhance our efforts to help the Uribe administration stop the flow of drugs from their country and into ours.

The situation in Colombia is at a critical point. We must ensure that it continues to move in the right direction. Colombia is a strong ally and major trading partner of the United States and is critical to the stability of the Western Hemisphere. It is also the home of three major terrorist organizations that derive about 70 percent of their funding from the production and distribution of cocaine, nearly half of which ends up on our streets. Their violent activities are a result of the need to maintain their narcotics trade, which has resulted in the social and economic instability of the country and the region.

President Uribe has shown a strong commitment to ending the drug trade in Colombia by the end of his administration in 2006. I am extremely encour-

aged by his successes in drug eradication and his efforts to strengthen democracy and the rule of law. In 2003, coca production was down 21 percent and opium poppy was down 10 percent from the previous year. So far this year, the number of hectares of coca eradicated and the number of drug seizures are up from last year. We must continue this success that is needed to maintain domestic and international support for the eradication program.

In Colombia, narcotics trafficking and terrorist acts have made it one of the most dangerous places in the world. Last year, Vice President Francisco Santos-Calderon testified before the Senate Drug Caucus that more than 8,000 acts of terror were committed against the Colombian people over the previous 5 years, including over 30,000 violent deaths during each of those years. However, since the vice president's testimony, there have been significant reductions in the numbers of homicides, assassinations, kidnappings and other terrorist acts. I am encouraged by these numbers and know that these changes are very encouraging to the people of Colombia.

Our counter-narcotics efforts in Colombia include military funding for equipment, training and education programs for Colombian military personnel. Raising the existing personnel caps will allow additional U.S. personnel to be made available to train Colombian personnel, and will enhance their ability to conduct their counter-narcotics missions. We have a window of opportunity here that we need to take advantage of. The United States must be willing to help the Colombian government reach this goal. I strongly urge my colleagues to oppose this amendment and ensure an adequate number of U.S. personnel available in Colombia.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. I wonder if the Senator from West Virginia would yield me 4 minutes.

The PRESIDING OFFICER. The Senator has 3½ minutes remaining.

Mr. LEVIN. I wonder if he would yield me 2 minutes.

Mr. BYRD. Mr. President, I yield the full 3½ minutes to my friend from Michigan.

Mr. LEVIN. Mr. President, I thank Senator BYRD.

The Byrd amendment allows for increases. That is the most important single point to make. There has been a suggestion that somehow or other if the Byrd amendment is adopted, that would reflect some kind of a decrease in support for what we are doing in Colombia. The Byrd amendment provides for an increase from the current level both on the military side and on the civilian side. The current military level is 400. The Byrd amendment allows for an increase to 500.

On the civilian side, the current level in law is 400. The Byrd amendment provides for an increase to 500. So both on

the military and the civilian personnel, the cap is raised by the Byrd amendment—not as far as the bill before us raises it. The committee raised it by more than that. But the question is by how much will we raise the cap, not whether we are going to raise the cap.

The Byrd amendment is a more modest increase. It is a more gradual increase. It is appropriate in terms of the circumstances in the world today. We have our troops spread all over. There are great needs, including in Colombia. I happen to agree with my good friend from Minnesota that we have successes in Colombia. I have been there, too. I have witnessed some of these successes. I support our efforts in Colombia. But given the kind of commitments that we have around the world, given the kind of demands on our troops around the world, it seems to me that a modest increase is called for at this time.

Again, we are not talking about reductions, we are talking about increases. The House of Representatives did not allow for an increase on the civilian side at all. They would retain the current cap of 400. The Byrd amendment would allow for that to go up to 500.

An increase, yes; an endorsement of what is going on in terms of the efforts in Colombia, yes, because if we raise the cap, that does reflect an endorsement of those activities. But given the requirements for our troops around the world, the demands upon us, this kind of a modest increase is appropriate.

Finally, it is unlikely that they will be able to use this many additional forces in any event. According to the State Department, the dates for increases in personnel are not just going to depend on our approval but also on program developments, personnel availability, and circumstances that exist on the ground.

The Byrd amendment represents a very proper, cautious, modest increase in flexibility for our Defense Department and State Department. It is appropriate that there be an increase but not as large as is currently in the bill.

I support the Byrd amendment.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. There is 5½ minutes on your side.

Mr. COLEMAN. Mr. President, the recommendation of the Armed Services Committee is a proper, cautious, moderate increase. That is what we are talking about. The numbers are not that great, but the message is significant. The message is significant. What we have is a recommendation, developed by General Hill from SOUTHCOM, saying this is what we need to make sure we are living up to our commitment and to modestly strengthen our commitment, that we have seen success. Let's reward success. Again, in a proper, cautious way.

I agree with my distinguished colleague from Michigan. That is the kind

of increase we need. But we are seeing success with murder down, kidnapping down. We are seeing great courage from President Uribe. We see Colombians step to the plate. We have to maintain the pressure. We are not talking about civil war. We are talking about a battle against terrorist organizations. Winning this battle will have a direct impact on the lives of Americans. It will have a direct impact on slowing the flow of cocaine and narcotics into this country.

On both sides of the aisle our colleagues are seeking the same outcome; that is, to have a proper, cautious, moderate increase in strength. But it would be wrong to send a signal to reject the recommendation, the thoughtful, reasoned, rational, proper, cautious recommendation of the Armed Services Committee on this issue. Let us send the right message and let us do the right thing by upholding the judgment of the Armed Services Committee, by not stepping back, not by placing the caps that this amendment would place.

Let's reaffirm our commitment to Colombia, to the world, about fighting narcoterrorism and winning this battle.

I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from West Virginia has 19 seconds.

Mr. BYRD. Mr. President, have the yeas and nays been ordered on this amendment?

The PRESIDING OFFICER. They have not.

Mr. BYRD. I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays have been ordered.

Mr. BYRD. I yield back the remainder of my time.

The PRESIDING OFFICER. Time is yielded back.

AMENDMENT NO. 3384, AS FURTHER MODIFIED

The PRESIDING OFFICER. Under the previous order, the pending amendment is Bond amendment No. 3384 on which there is no time limit.

The Senator from Missouri.

Mr. BOND. Mr. President, I call up amendment No. 3384 and ask unanimous consent to incorporate the modifications that are at the desk.

The PRESIDING OFFICER. Is there objection to modifying the amendment?

Without objection, it is so ordered.

The amendment, as further modified, is as follows:

At the end of subtitle D of title XXXI, insert the following:

**SEC. 3146. INCLUSION OF CERTAIN FORMER NUCLEAR WEAPONS PROGRAM WORKERS IN SPECIAL EXPOSURE COHORT UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM.**

(a) FINDINGS.—Congress makes the following findings:

(1) Energy workers at the former Mallinkrodt facilities (including the St. Louis downtown facility and the Weldon Springs facility) were exposed to levels of radionuclides and radioactive materials that

were much greater than the current maximum allowable Federal standards.

(2) The Mallinkrodt workers at the St. Louis site were exposed to excessive levels of airborne uranium dust relative to the standards in effect during the time, and many workers were exposed to 200 times the preferred levels of exposure.

(3)(A) The chief safety officer for the Atomic Energy Commission during the Mallinkrodt-St. Louis operations described the facility as 1 of the 2 worst plants with respect to worker exposures.

(B) Workers were excreting in excess of a milligram of uranium per day causing kidney damage.

(C) A recent epidemiological study found excess levels of nephritis and kidney cancer from inhalation of uranium dusts.

(4) The Department of Energy has admitted that those Mallinkrodt workers were subjected to risks and had their health endangered as a result of working with these highly radioactive materials.

(5) The Department of Energy reported that workers at the Weldon Springs feed materials plant handled plutonium and recycled uranium, which are highly radioactive.

(6) The National Institute of Occupational Safety and Health admits that—

(A) the operations at the St. Louis downtown site consisted of intense periods of processing extremely high levels of radionuclides; and

(B) the Institute has virtually no personal monitoring data for Mallinkrodt workers prior to 1948.

(7) The National Institute of Occupational Safety and Health has informed claimants and their survivors at those 3 Mallinkrodt sites that if they are not interviewed as a part of the dose reconstruction process, it—

(A) would hinder the ability of the Institute to conduct dose reconstruction for the claimant; and

(B) may result in a dose reconstruction that incompletely or inaccurately estimates the radiation dose to which the energy employee named in the claim had been exposed.

(8) Energy workers at the Iowa Army Ammunition Plant (also known as the Burlington Atomic Energy Commission Plant and the Iowa Ordnance Plant) between 1947 and 1975 were exposed to levels of radionuclides and radioactive material, including enriched uranium, plutonium, tritium, and depleted uranium, in addition to beryllium and photon radiation, that are greater than the current maximum Federal standards for exposure.

(9) According to the National Institute of Occupational Safety and Health—

(A) between 1947 and 1975, no records, including bioassays or air samples, have been located that indicate any monitoring occurred of internal doses of radiation to which workers described in paragraph (8) were exposed;

(B) between 1947 and 1955, no records, including dosimetry badges, have been located to indicate that any monitoring occurred of the external doses of radiation to which such workers were exposed;

(C) between 1955 and 1962, records indicate that only 8 to 23 workers in a workforce of over 1,000 were monitored for external radiation doses; and

(D) between 1970 and 1975, the high point of screening at the Iowa Army Ammunition Plant, only 25 percent of the workforce was screened for exposure to external radiation.

(10) The Department of Health and Human Services published the first notice of proposed rulemaking concerning the Special Exposure Cohort on June 25, 2002, and the final rule published on May 26, 2004.

(11) Many of those former workers have died while waiting for the proposed rule to be

finalized, including some claimants who were waiting for dose reconstruction to be completed.

(12) Because of the aforementioned reasons, including the serious lack of records and the death of many potential claimants, it is not feasible to conduct valid dose reconstructions for the Iowa Army Ammunition Plant facility or the Mallinkrodt facilities.

(b) INCLUSION OF CERTAIN FORMER WORKERS IN COHORT.—Section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398); 42 U.S.C. 7384(14)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following new subparagraph (C):

“(C) Subject to the provisions of section 3612A and section 3146(e) of the National Defense Authorization Act for Fiscal Year 2005, the employee was so employed for a number of work days aggregating at least 45 workdays at a facility operated under contract to the Department of Energy by Mallinkrodt Incorporated or its successors (including the St. Louis downtown or ‘Destrehan’ facility during any of calendar years 1942 through 1958 and the Weldon Springs feed materials plant facility during any of calendar years 1958 through 1966), or at a facility operated by the Department of Energy or under contract by Mason & Hangar-Silas Mason Company at the Iowa Army Ammunition Plant (also known as the Burlington Atomic Energy Commission Plant and the Iowa Ordnance Plant) during any of the calendar years 1947 through 1975, and during the employment—

“(i)(I) was monitored through the use of dosimetry badges for exposure at the plant of the external parts of an employee’s body to radiation; or

“(ii) was monitored through the use of bioassays, in vivo monitoring, or breath samples for exposure at the plant to internal radiation; or

“(iii) worked in a job that had exposures comparable to a job that is monitored, or should have been monitored, under standards of the Department of Energy in effect on the date of enactment of this subparagraph through the use of dosimetry badges for monitoring external radiation exposures, or bioassays, in vivo monitoring, or breath samples for internal radiation exposures, at a facility.”.

(c) FUNDING OF COMPENSATION AND BENEFITS.—(1) Such Act is further amended by inserting after section 3612 the following new section:

**“SEC. 3612A. FUNDING FOR COMPENSATION AND BENEFITS FOR CERTAIN MEMBERS OF THE SPECIAL EXPOSURE COHORT.**

“(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Labor for each fiscal year after fiscal year 2004 such sums as may be necessary for the provision of compensation and benefits under the compensation program for members of the Special Exposure Cohort described in section 3621(14)(C) in such fiscal year.

“(b) PROHIBITION ON USE FOR ADMINISTRATIVE COSTS.—(1) No amount authorized to be appropriated by subsection (a) may be utilized for purposes of carrying out the compensation program for the members of the Special Exposure Cohort referred to in that subsection or administering the amount authorized to be appropriated by subsection (a).

“(2) Amounts for purposes described in paragraph (1) shall be derived from amounts authorized to be appropriated by section 3614(a).

“(c) PROVISION OF COMPENSATION AND BENEFITS SUBJECT TO APPROPRIATIONS ACTS.—The provision of compensation and benefits under the compensation program for members of the Special Exposure Cohort referred to in subsection (a) in any fiscal year shall be subject to the availability of appropriations for that purpose for such fiscal year and to applicable provisions of appropriations Acts.”.

(2) Section 3612(d) of such Act (42 U.S.C. 7384e(d)) is amended—

(A) by inserting “(1)” before “Subject”; and

(B) by adding at the end the following new paragraph:

“(2) Amounts for the provision of compensation and benefits under the compensation program for members of the Special Exposure Cohort described in section 3621(14)(C) may be derived from amounts authorized to be appropriated by section 3612A(a).”.

(d) OFFSET.—The total amount authorized to be appropriated under subtitle A of this title is hereby reduced by \$61,000,000.

(e) CERTIFICATION.—Funds shall be available to pay claims approved by the National Institute of Occupational Safety and Health for a facility by reason of section 3621(14)(C) of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended by subsection (b)(2), if the Director of the National Institute of Occupational Safety and Health certifies with respect to such facility each of the following:

(1) That no atomic weapons work or related work has been conducted at such facility after 1976.

(2) That fewer than 50 percent of the total number of workers engaged in atomic weapons work or related work at such facility were accurately monitored for exposure to internal and external ionizing radiation during the term of their employment.

(3) That individual internal and external exposure records for employees at such facility are not available, or the exposure to radiation of at least 40 percent of the exposed workers at such facility cannot be determined from the individual internal and external exposure records that are available.

(f) It is the sense of the Senate that all employees who are eligible to apply for benefits under the compensation program established by the Energy Employees Occupational Illness Compensation Act should be treated fairly and equitably with regard to inclusion under the special exposure cohort provisions of this Act.

Mr. BOND. Mr. President, we are not going to take much time, although I see my colleague from Iowa is here. This is a measure designed to compensate the former energy workers at the Mallinkrodt site in the St. Louis, MO, area and the Iowa atomic energy workers at what was known as the Burlington Atomic Energy Commission plant and the Iowa ordinance plant.

We have gone through many iterations trying to work it out to make sure that all sides are comfortable. I appreciate the courtesies of the New York Senators who have issues. We look forward to working with them on solving their issues. There has been a great deal of work put into this. Some people may think it is small, when it is less than a couple hundred million dollars, but let me tell you, this is huge to the former workers and their families who are directly affected.

I went back to Missouri last Friday, after we had talked about this on the

Senate floor. I met with some of the workers and some of their families. The young woman who has been the leader in this effort, Denise Brock, was there. She told me how much this meant to her mother, who lost her husband several years ago as a result of the cancers brought on by excessive radiation. She also told me that when I spoke last Thursday about Jim Mitalski, a former Mallinkrodt worker who had gone into the hospital and slipped into a coma—he lost a foot, had multiple cancers—she said she made a recording of the floor remarks I made, took it down and played it next to Mitalski’s bedside where he seemed to be in a deep sleep. She said as she played it and we mentioned his name, she saw a smile come over his face, and she believed that he did know that we were going to do something. Unfortunately, Mr. Mitalski has since died.

That is happening to workers in Iowa, in Missouri, and all across the country. Yes, they were on the forefront. They were the atomic warriors, and they made what nobody knew at that time were great sacrifices of their health so we could win World War II.

Mr. President, I thank the Chair and I thank all of the people who worked on this issue.

I thank all parties for their assistance. I urge adoption of this after the appropriate comments are made.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Iowa is recognized.

Mr. HARKIN. Madam President, my colleague from Missouri, Senator BOND, and I have been working very hard on this amendment to address the very serious situation faced by former Department of Energy workers in Iowa and Missouri. I thank Senator BOND for his leadership on this issue, and for working very closely to address this very problematic situation. We have also worked very closely with the chairman and the ranking member in reaching an agreement enabling us to get this amendment done. I thank both Senator WARNER and Senator LEVIN and their respective staffs for all of their help in reaching this agreement.

This amendment authorizes adding workers who were employed in nuclear weapons facilities in Missouri and Iowa who are suffering from serious cancers to the group of workers who are already eligible for automatic compensation. The groups of workers eligible for automatic compensation, a “special exposure cohort, as it is called”, already exists for workers from Kentucky, Ohio, Alaska, and Tennessee.

But since this original legislation was passed in 2000, we have learned a great deal more about the facilities in Iowa and Missouri that makes it necessary to include the Iowa and Missouri workers in the special exposure cohort as well.

In Iowa, over the last 4 years, we have discovered there are virtually no documents that exist that show what workers at the Iowa Army Ammunition

Plant were exposed to between 1947 and 1975. This makes it almost impossible to estimate radiation doses received by the workers, a required step before they can be compensated.

Almost 4 years into this program, only 38 Iowans have received compensation. Of the people who worked at these plants assembling nuclear weapons, working with very highly radioactive materials, some are still alive and are elderly, but they are ill and they are dying.

My friend from Missouri spoke about visiting some of his workers in Missouri. I, too, have had that experience over the last several years—visiting my fellow Iowans who worked at the Iowa Army Ammunition Plant during those years after World War II, up until about 1975. They are ill and they are dying and far too many of them are suffering from very painful cancers.

In fact, it is most poignant that this is happening right now because the individual who first brought this to my attention several years ago, Bob Anderson, is once again ill himself. In 1997, Bob wrote me a letter and said that he and some of the former workers at the Iowa Army Ammunition Plant had contracted cancers. Many were dying and he knew they had been exposed to radiation, and he asked was there anything I could do about it because they were not getting any medical help whatsoever.

I, then, wrote a letter to the Department of the Army to inquire about this. I received a reply from the Department of the Army that said basically there were no nuclear weapons ever assembled there. Well, we just took the answer from the Army and sent it back out to Bob Anderson. This upset him greatly. He came back into my office in Iowa and said: Wait a minute. They are wrong; we assembled nuclear weapons there for almost 30 years.

So we started looking at it further, and we found that the Department of the Army was wrong. We had gotten misinformation from the Department of the Army. We finally dug back through the DOE and the old Atomic Energy files and found out that, in fact, they had assembled nuclear weapons at IAAP for close to 30 years. This was all very confusing. We finally got it straightened out. These workers were exposed to radiation, they weren’t told what they were being exposed to and they were told at the time this was top secret that they could not discuss it with anyone, that they could receive prison terms if they were to talk about this with anyone.

Many of these people became sick and many died without ever having breathed a word that they had worked assembling nuclear weapons because they were loyal, patriotic citizens. They had taken an oath and were sworn to secrecy that they would not talk about it. Even today some still will not speak about the work they did.

Well, for those who are left, we finally got it cleared that they could

talk about it openly with their doctors, their health care practitioners. But Bob Anderson is the one person singularly responsible for highlighting and bringing to the public attention what happened at the Iowa Army Ammunition Plant, the person who started the ball rolling, so to speak, to get us to understand that there were all these workers who had been exposed but who are unaccounted for.

Bob Anderson is the one who was responsible for us and for the Department of Energy now looking at the Department of the Army trying to find the records, and now understanding that there are no records. There are no dosage records for these people.

Several years ago, when he first contacted my office about this, he had been diagnosed with lymphoma. He has struggled with it ever since. As we speak today, Bob Anderson is in a hospital. He had his thyroid taken out. I spoke with his wife the other day on the phone while he was undergoing surgery. Later on, after he had gotten out, the doctor told her that his cancerous thyroid was the largest swollen thyroid he had ever seen in his life.

We are now waiting for the biopsies. We are hoping it has not spread. But as we stand here today, Bob Anderson lies in a hospital bed waiting to find out if he now has a second kind of cancer, thyroid cancer, on top of his lymphoma. Bob Anderson who side by side with other IAAP workers spent many years assembling nuclear weapons, who had been exposed to radiation, who had not been told what he was exposed to, and who did not wear dosage badges. All Bob Anderson is asking for is fair treatment, and that is what we are accomplishing today. That is what the managers of the bill have agreed to.

So I would like to extend a big thank you to Senator WARNER and Senator LEVIN and their staffs for helping us get this through. These are people who are suffering, they are dying. They need help, and they have no place to turn other than us in the U.S. Congress.

As I said, some people were put into that cohort in 2000. We recognized then that there would be people out there for whom there were no records, and for whom fairness would require that they should be put into that special cohort. That is what this amendment does. This amendment is an important step in that direction: to get these people put into that special cohort to provide them automatic compensation.

Again, I thank my colleague from Missouri for his leadership and help on this issue. I also again thank Senator WARNER and Senator LEVIN and their respective staffs for helping us work this out. I thank Bob Anderson for his courageous stand, for over the last several years never giving up, for his advocacy, not just on his own behalf but for thousands of his fellow workers in Iowa and, I daresay, in Missouri and other places. Even as he lies in the hospital,

I want him to know we are doing everything we can to right this wrong and to get compensation to those former nuclear weapons workers.

Madam President, 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. HARKIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The question is on agreeing to amendment No. 3384, as further modified. Is there further debate? The Senator from Missouri.

Mr. TALENT. Madam President, I appreciate the chance to offer a word or two on the amendment. My friend from Missouri and my friend from Iowa have covered the ground very well. In part, I rise to compliment them on their dogged tenacity on behalf of these workers who deserve this compensation and now have a chance of receiving it because of their hard work.

I also compliment the managers of the bill who, even though in their States they do not have people directly involved in this, have seen the plight of our Missouri workers and Iowa workers and have worked with us to get this amendment adopted.

It simply means workers in Iowa and Missouri are going to have the same opportunity to get this compensation under expedited rules and procedures that already exist in other States so they will actually have some recourse and some compensation for the illnesses they have suffered because of this overexposure, and they will get it before they pass away because of the cancers that have resulted.

There have been many tragic instances where people have fought for this compensation, have waited for what the law says they are entitled to, and have never gotten it. This amendment holds out hope now that we will be able to do justice in these cases.

I compliment my friend from Iowa and my colleague from Missouri for their very hard work, and I join them in offering and supporting the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I commend the Senators who have been involved in again bringing this issue to the forefront, fighting the hard fight that was necessary for this to be accomplished.

As far as I know, there are no other Senators at this point who wish to talk about this modified amendment. As far as we are concerned, it can be adopted.

Mr. SCHUMER. Mr. President, I would like to acknowledge Senator WARNER and Senator LEVIN for their efforts on this legislation, which is vital to the men and women of our military and our national security. At this

time, I, along with my colleague Senator CLINTON, would like to engage Senators WARNER and LEVIN in a colloquy regarding the needs of employees who worked in Department of Energy, DOE, and DOE-contractor facilities on atomic weapons-related production in New York and throughout the United States.

Mrs. CLINTON. I also wish to recognize the efforts of my friends from Virginia and Michigan on this bill and their willingness to engage in this colloquy in order to discuss the needs of New York's former nuclear workers and the necessity of providing them with prompt access to the compensation they have earned through service to this country.

Mr. WARNER. I thank the Senators from New York for their remarks, and would be happy to engage them in a colloquy.

Mr. LEVIN. I am also happy to engage in this colloquy with the Senators from New York.

Mr. SCHUMER. I thank my esteemed colleagues, Mr. WARNER and Mr. LEVIN, for recognizing the common plight among sick workers throughout our great Nation. In my home State of New York, thousands of nuclear workers labored for decades during the cold war in hazardous conditions at DOE and contractor facilities unaware of the health risks. These workers helped to create the huge nuclear arsenal that served as a deterrent to the Soviet Union during the cold war, but many paid a high price in terms of their health. It is now our obligation to assist them in all possible ways, so that their sacrifices do not go unrecognized.

Mrs. CLINTON. I wholeheartedly agree with the senior Senator from New York. Our State's contribution to America's security throughout the cold war was large and important. New York is home to 36 former atomic weapons employer sites and DOE facilities—more than any other State in the Nation. Fourteen of these facilities are located in the western New York region alone.

Under the Energy Employees Occupational Illness Compensation Act of 2000, Congress made a promise to the people who worked at these sites and others like them across the country that they would receive uniform, timely compensation under the act under certain conditions. But to date, NIOSH has completed just one of the many needed site profiles in New York that are needed to administer the program.

One of the provisions of that act provides for what is known as a special exposure cohort. The act named facilities in four States that would be added to the special cohort, which in essence results in prompt payment of benefits under the act without the need to go through a dose reconstruction process.

The Bond-Harkin amendment would, under certain conditions, add several facilities in Missouri and Iowa to this special exposure cohort. I am very sympathetic to the plight of these

workers, but I am even more concerned about the workers that I represent. Many of the New York workers are in very similar plights as the workers in Missouri and Iowa who might be helped by the Bond-Harkin amendment.

I am encouraged that the amendment recognizes this fact, in that it includes a sense of the Senate declaring that all eligible employees deserve fair and equitable consideration under the act's special exposure cohort provisions.

Mr. SCHUMER. I agree, and hope that when the Bond-Harkin amendment is discussed in conference, the Senators from Virginia and Michigan will take into consideration the workers in New York and throughout the country who share a similar set of circumstances to those workers in Iowa and Missouri. In particular, I would ask that they look at how the special exposure cohort issue can be addressed in the most equitable way possible, and contemplate options that would provide for equitable access to the special exposure cohort for New York's workers.

Mrs. CLINTON. I echo the request of my colleague from New York. I would also ask whether the Senators from Virginia and Michigan share our understanding that the Bond-Harkin amendment to the National Defense Authorization Act of 2004 does not in any way reflect the view that New York's workers or those of any other State are less deserving of access to special cohorts than those named in the amendment.

Mr. WARNER. Mr. President, I thank my esteemed colleagues from New York for their dedication to this cause. We indeed recognize the sacrifice workers made throughout our country in the nuclear arms buildup of the cold war and will endeavor to take into account the similar situations that exist for nuclear workers throughout our great Nation. I agree with their assessments of the Bond-Harkin amendment and assure the Senators from New York that I will take their concerns into consideration when conferencing the House and Senate bills.

Mr. LEVIN. I join my friend from Virginia in recognizing the commitment of the Senators from New York to finding a solution to this critical problem. I share their understanding regarding the scope and intent of the Bond-Harkin amendment, and will do our best to address their concerns when conferencing the House and Senate bills.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3384, as further modified.

The amendment (No. 3384), as further modified, was agreed to.

Mr. LEVIN. 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. COCHRAN. Madam President, I ask unanimous consent that the calling of the quorum be rescinded.

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

UNANIMOUS CONSENT REQUEST—S. 2507

Mr. COCHRAN. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 580, S. 2507; that the Cochran amendment at the desk be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

Mr. REID. Madam President, reserving the right to object, I have spoken with the distinguished junior Senator from Michigan, Ms. STABENOW. She has some problems with the way this piece of legislation is written. She thinks there should be more attention focused on fruits and vegetables. She would like to have further discussion with the distinguished senior Senator from Mississippi.

As a result of that, I hope something can be worked out on this. I reluctantly note my objection on behalf of my friend from Michigan.

The PRESIDING OFFICER. The objection is heard.

Mr. COCHRAN. 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. WARNER. 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. WARNER. Madam President, the managers of the bill, in consultation with the leadership, are making progress, I assure colleagues.

#### MORNING BUSINESS

Mr. WARNER. At this point in time, I ask unanimous consent that the Senate go into a period of morning business, with Senators allowed to speak for up to 8 minutes each, with the right to petition for other time if there is no objection by others waiting, and the Senate resume consideration of the authorization bill at the hour of 1:40.

Mr. ENSIGN. If we could modify the unanimous consent that I be recognized at 1:05 to speak for 8 minutes.

Mr. WARNER. I have no objection to that.

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

The PRESIDING OFFICER (Mr. HAGEL). The Senator from Nevada.

#### OIL-FOR-FOOD PROGRAM

Mr. ENSIGN. Mr. President, I rise to speak about the Oil-for-Food scandal. I do so because I have been told that high ranking officials at the State Department and Paul Volcker, who is heading up the U.N. investigation, believe Senators are not personally committed to gaining access to all relevant

documents, including U.N. audits. That is not true.

A bipartisan group of Senators, including ranking members from the Armed Services and Foreign Relations Committees, wrote to Mr. Bremer in Iraq asking him to secure the Oil-for-Food documents.

I ask unanimous consent that the letter be printed in the RECORD.

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

U.S. SENATE,

Washington, DC, June 9, 2004.

Hon. L. PAUL BREMER, III,  
Administrator, Coalition Provisional Authority,  
Baghdad, Iraq.

DEAR MR. BREMER: We are writing to inquire about the status of documents relating to the United Nations "Oil-for-Food" Program (OFF Program), and express our concerns about recent developments that could jeopardize American interests with respect to those documents.

The Section 2007 report submitted to Congress in April states that you have ordered "all relevant records in Iraqi ministries be inventoried and protected so that they can be made available" for certain investigations into the OFF Program. We also understand that the Coalition Provisional Authority (CPA) has recently entered into a Memorandum of Understanding with the Independent Inquiry Committee (IIC) regarding the sharing of documents and information relating to the OFF Program.

Our concern is that all documents related to the OFF Program be secured not only for the IIC and the Iraqi Board of Supreme Audit (BSA), but also for investigations conducted by Congressional committees. Accordingly, we request that the CPA work with the Inspector General's Office of the Department of Defense (DoD IG) to secure a copy of all documents that are being gathered for the BSA and the IIC investigations. Once such documents are secured, a complete set of documents relevant to the OFF Program should be delivered within sixty (60) days or no later than August 31, 2004, to the General Accounting Office for further delivery, upon request, to any Congressional committee of competent jurisdiction. Please identify by no later than June 11, 2004, a person at the CPA and at DoD IG responsible for securing the documents in response to this request.

We are sure you will agree that these documents should be secured for all investigations into the OFF Program, whether in Iraq or the United States. In light of the recent dissolution of the Iraqi Governing Council, the formation of a new Iraqi government ahead of schedule, and the rapidly-approaching June 30th turnover date, we are concerned that American access to such documents will be jeopardized. Accordingly, we believe that the documents should be secured, duplicated, and delivered to DoD IG prior to June 30, 2004.

Sincerely,

NORM COLEMAN,  
CARL LEVIN,  
SAXBY CHAMBLISS,  
JOSEPH R. BIDEN, Jr.,  
LINDSEY GRAHAM,  
JOHN ENSIGN.

Mr. ENSIGN. Congressional investigators have an interest in making sure those documents are available and accessible. A subpoena has been served on BNP by the Permanent Subcommittee on Investigations. Chairman COLEMAN and the ranking Democrat, Senator LEVIN, have also sent letters seeking Oil-for-Food documents to

the State Department and the General Accounting Office.

An amendment to the Defense bill, which would help Congress to conduct its own inquiries into the Oil-for-Food Program was passed unanimously. We want access to those documents. We wish the Volcker panel well; however, we are not going to abandon the duty of this Congress to conduct proper oversight or subcontract that role to an international body. The stakes are much too high.

We now believe that Saddam Hussein, corrupt U.N. officials, and corrupt well-connected countries were the real benefactors for the Oil-for-Food Program. They profited from illegal oil shipments, financial transactions, kickbacks, and surcharges, and allowed Saddam Hussein to build up his armed forces and live in the lap of luxury.

The evidence in this far-reaching scandal tells an unbelievable story. Our own U.S. General Accounting Office estimates that Saddam Hussein siphoned off \$4.4 billion through oil sale surcharges. Saddam Hussein also demanded kickbacks on the humanitarian relief side from suppliers which amounted to 10 to 20 percent on many contracts. Saddam used this revenue to rebuild Iraq's military capabilities, to maintain lavish palaces, buy loyalty, oppress his people, and perhaps financially support terrorism.

And as Claude Haknes-Drielsma, an IGC consultant investigating the scandal, testified, the secret payments . . . "provided Saddam Hussein and his corrupt regime with a convenient vehicle through which he bought support, internationally by bribing political parties, companies, and journalists . . . This secured the cooperation and support of countries that included members of the Security Council of the United Nations."

The United Nations should be embarrassed. What resulted from the goodwill gesture was international scandal, corruption at the highest levels, and suffering Iraqi citizens—not exactly a model U.N. program.

Tasked by the international community to deny Saddam Hussein the ability to rebuild his military apparatus while providing humanitarian needs, the United Nations allowed the corrupt to become richer and innocent Iraqis to be oppressed. Today we have a chance to rectify that injustice. We must demand that the United Nations cooperate completely with efforts to extrapolate the truth from this scandal and punish the guilty.

Unfortunately, that does not appear to be happening, as William Safire notes in a recent column entitled "Tear Down This UN Stonewall." He talks about how Paul Volcker's first choices for staffing the U.N.'s own Oil-for-Food—

. . . were turned off not just by the lack of subpoena or oath-requiring power . . . but by an inadequate budget to dig into the largest financial rip-off in history. As a result, after nearly three months, a foot-dragging bu-

reaucracy has successfully frustrated the independent committee dependent on it.

We know that officials acting on behalf of Benon Sevan, the executive director of the Oil-for-Food Program for the United Nations, who is personally implicated in the scandal, are asking contractors not to release documents relating to the program to congressional investigators without first getting U.N. authorization. We know the U.S. has asked for copies of the U.N. internal audit reports on this program, and the U.N. denied our request. I will include an exchange of letters to that effect in the RECORD.

It was reported recently that the head of the U.N.'s own inspector general's office himself is now being investigated by the United Nations. The U.N. should be more interested in bringing the truth to light than trying to protect its tattered reputation and its corrupt officials. I hope the Volcker panel gets the tools it needs from the U.N. to do a thorough investigation of the Oil-for-Food Program. The Volcker panel work does not obviate the need for the U.S. Congress to conduct its own investigation.

My amendment ensures that the Oil-for-Food documents in Iraq are secured before the June 30 handover and that copies are brought to the United States. Right now it is unclear what will happen to those documents following the June 30 handover. The amendment also requires U.S. agencies to provide relevant congressional committees access to Oil-for-Food documents. Additionally, it calls on the U.S. to use its voice and vote to get access to U.N. Oil-for-Food audits and core documents.

Lastly, it mandates a GAO review of the Oil-for-Food Program. Under the Helms-Biden U.N. reform legislation which was signed into law, as this amendment makes clear, we believe the GAO should have access to U.S. documents relating to the Oil-for-Food Program.

We in the Congress have a choice to make. We could do nothing and allow the word "humanitarianism" to be the new code word for corruption and scandal from here on out, or we can stand up and make the United Nations rightfully accountable for the corruption that has harmed innocent Iraqis.

The answer is clear: We must act.

The U.N. is broken. If the Security Council is to function, there cannot be questions as to whether members are more interested in lining their pockets than preserving security. We have to make sure Iraqi government officials get a clear message that the corruption and kickbacks of the Saddam Hussein regime—potentially aided and abetted by U.N. officials—will no longer be tolerated.

I thank my colleagues for helping to craft this amendment. LINDSAY GRAHAM took the lead in achieving this consensus. Senators CHAMBLISS, COLEMAN, LUGAR, KYL, ENZI, and the majority leader all made important con-

tributions, as did the minority, in finalizing the language. This was truly a collaborative process.

I ask unanimous consent that the letters I mentioned earlier be printed in the RECORD.

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

UNITED STATES REPRESENTATIVE  
FOR UNITED NATIONS MANAGEMENT AND REFORM,  
New York, NY, May 10, 2004.

Mr. DILEEP NAIR,  
Office for Internal Oversight Services, the  
United Nations, New York, NY.

DEAR MR. NAIR: The U.S. Mission requests the following documentation/information regarding the Oil-for-Food Programme:

—The 55 OIOS internal reviews, or audits, of aspects of the OFF program;

—All bank statements for the OFF escrow account at BNP-Paribas;

—All Oil Overseer reports previous to October 2001;

—Copies of all Customs Reports from the UN's Office of Iraq Programme (OIP) to the 661 Committee that contain pricing reviews with notes of concern about possible overpricing.

Please provide these documents by 14 May 2004. If this is not possible, please provide a written explanation, including when we might expect to receive such documentation. Thank you for your assistance.

Sincerely,

PATRICK KENNEDY.

UNITED NATIONS  
INTERNAL OVERSIGHT SERVICES,  
New York, NY, May 12, 2004.

Reference: OUSG-04-370

Ambassador PATRICK F. KENNEDY,  
Representative for United Nations Management,  
United States Mission to the United Nations,  
New York, NY.

DEAR AMBASSADOR KENNEDY: I refer to your letter to me of 10 May, as well as your previous letters of 20 April and 4 May, seeking documents relating to the Oil-for-Food Programme.

As you know, the Secretary-General has established an independent inquiry into allegations relating to the Programme, chaired by Mr. Paul Volcker. You would also be aware that Mr. Volcker has asked the Secretary-General to ensure that all relevant documents are secured solely for the Inquiry's use, and that, on 6 May, Mr. Volcker issued a statement saying that the Inquiry Committee believes non-public documents related to the Programme should not be released during the current preliminary stage of the Inquiry—though it will "consider appropriate disclosure" at a later stage, as the investigation proceeds.

As the internal reviews and audits of the Programme carried out by this Office, bank statements of the escrow account and letters sent to contractors, come in the category of "non-public" documents, these cannot be disclosed at the moment. On the other hand, the reports of the Oil Overseers and of the Customs Reports have already been provided to the United States government in its capacity as a member of the 661 Committee.

Yours sincerely,

DILEEP NAIR,  
Under-Secretary General.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I ask unanimous consent that I may proceed for no more than 3 minutes.

The PRESIDING OFFICER. Is there objection?



Without objection, it is so ordered.

#### 250TH ANNIVERSARY OF THE FRENCH AND INDIAN WAR

Mr. BYRD. Mr. President, our Nation launches a 6-year commemoration of the 250th anniversary of the French and Indian war. That commemoration is this year. As part of the celebration, Members of the Senate and their staffs are invited to a special viewing of a handwritten autobiographical manuscript of George Washington, which conveys unique insights of the war and young Washington's personal reflections on his experiences. Washington's "Remarks" will be on display in S-127 in the Capitol on Wednesday, today, from 12 noon until 3 p.m.

George Washington is most commonly remembered as our Nation's first President and a Revolutionary War commander. Americans are far less aware of his activities during the French and Indian war. Washington never wrote a memoir, but "Remarks" provides a firsthand account of his early life, including his experiences in the French and Indian war.

So I hope Senators will take the opportunity to view this important manuscript and learn more about George Washington through this story penned in his own hand.

Mr. President, in closing, I thank the honorable Ned Rose of Charleston, WV, for his thoughtfulness and his efforts in regard to having this displayed in S-127 of the Capitol today, from 12 noon until 3 o'clock.

#### WHY WE ARE IN IRAQ

Mr. HOLLINGS. Mr. President, I submitted a column on how we got into the mess in Iraq, which appeared this morning in The State newspaper in Columbia, SC. 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:

Peoples the world around have a history of culture and religion. In the Mideast, the religion is predominantly Muslim and the culture tribal. The Muslim religion is strong, i.e., those that don't conform are considered infidels; those of a tribal culture look for tribal leadership, not democracy. We liberated Kuwait, but it immediately rejected democracy.

2. In 1996, a task force was formed in Jerusalem including Richard Perle, Douglas Feith and David Wurmser. They submitted a plan for Israel to incoming Prime Minister Benjamin Netanyahu called Clean Break. It proposed that negotiations with the Palestinians be cut off and, instead, the Mideast be made friendly to Israel by democratizing it. First Lebanon would be bombed, then Syria invaded on the pretext of weapons of mass destruction. Afterward, Saddam Hussein was to be removed in Iraq and replaced with a Hashemite ruler favorable to Israel.

The plan was rejected by Netanyahu, so Perle started working for a similar approach to the Mideast for the United States. Taking on the support of Dick Cheney, Paul Wolfowitz, Stephen Cambone, Scooter Libby,

Donald Rumsfeld, et al., he enlisted the support of the Project for the New American Century.

The plan hit paydirt with the election of George W. Bush. Perle took on the Defense Policy Board. Rumsfeld, Wolfowitz and Feith became one, two and three at the Defense Department, and Cheney as vice president took Scooter Libby and David Wurmser as his deputies. Clean Break was streamlined to go directly into Iraq.

Iraq, as a threat to the United States, was all contrived. Richard Clarke stated in his book, *Against All Enemies*, with John McLaughlin of the CIA confirming, that there was no evidence or intelligence of "Iraqi support for terrorism against the United States" from 1993 until 2003 when we invaded. The State Department on 9/11 had a list of 45 countries wherein al Qaeda was operating. While the United States was listed, it didn't list the country of Iraq.

President Bush must have known that there were no weapons of mass destruction in Iraq. We have no al Qaeda, no weapons of mass destruction and no terrorism from Iraq; we were intentionally misled by the Bush administration.

Which explains why President-elect Bush sought a briefing on Iraq from Defense Secretary William Cohen in January before taking the oath of office and why Iraq was the principal concern at his first National Security Council meeting—all before 9/11. When 9/11 occurred, we knew immediately that it was caused by Osama bin Laden in Afghanistan. Within days we were not only going into Afghanistan, but President Bush was asking for a plan to invade Iraq—even though Iraq had no involvement.

After 15 months, Iraq has yet to be secured. Its borders were left open after "mission accomplished," allowing terrorists throughout the Mideast to come join with the insurgents to reek havoc. As a result, our troops are hunkered down, going out to trouble spots and escorting convoys.

In the war against terrorism, we've given the terrorists a cause and created more terrorism. Even though Saddam is gone, the majority of the Iraqi people want us gone. We have proven ourselves "infidels." With more than 800 GIs killed, 5,000 maimed for life and a cost of \$200 billion, come now the generals in command, both Richard Myers and John Abizaid, saying we can't win. Back home the cover of The New Republic magazine asks, "Were We Wrong?"

Walking guard duty tonight in Baghdad, a G.I. wonders why he should lose his life when his commander says he can't win and the people back home can't make up their mind. Unfortunately, the peoples of the world haven't changed their minds. They are still against us. Heretofore, the world looked to the United States to do the right thing. No more. The United States has lost its moral authority.

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

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

#### UNANIMOUS CONSENT AGREE- MENT—EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent

that immediately following the next votes, the Senate proceed to executive session and votes on the following nominations on today's Executive Calendar: Calendar Nos. 592 and 609. I further ask consent that following the votes, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session, with no intervening action or debate.

Finally, I ask unanimous consent that there be 4 minutes of debate equally divided prior to each of the votes.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Could we have these votes, as are the votes preceding this, 10-minute votes?

Mr. FRIST. We have no objection on our side to 10-minute votes.

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

#### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

The PRESIDING OFFICER. The Senate will continue the consideration of S. 2400.

#### AMENDMENT NO. 3303

There are now 2 minutes of debate equally divided related to the Corzine amendment.

The Senator from Nevada.

Mr. REID. We yield back our time.

Mr. FRIST. We yield back the remainder of our time.

The PRESIDING OFFICER. The question is now on agreeing to the motion to waive the Budget Act with respect to the Corzine amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Kansas (Mr. BROWNBACK) is necessarily absent.

I further announce that if present and voting the Senator from Kansas (Mr. BROWNBACK) would vote "no."

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The yeas and nays resulted—yeas 49, nays 49, as follows:

[Rollcall Vote No. 136 Leg.]

#### YEAS—49

|          |             |             |
|----------|-------------|-------------|
| Akaka    | Dayton      | Kohl        |
| Baucus   | Dodd        | Landrieu    |
| Bayh     | Dorgan      | Lautenberg  |
| Biden    | Durbin      | Leahy       |
| Bingaman | Edwards     | Levin       |
| Boxer    | Feingold    | Lieberman   |
| Breaux   | Feinstein   | Lincoln     |
| Byrd     | Graham (FL) | Mikulski    |
| Cantwell | Harkin      | Murray      |
| Carper   | Hollings    | Nelson (FL) |
| Clinton  | Inouye      | Nelson (NE) |
| Collins  | Jeffords    | Pryor       |
| Corzine  | Johnson     | Reed        |
| Daschle  | Kennedy     | Reid        |

Rockefeller  
Sarbanes  
Schumer

Snowe  
Specter  
Stabenow

Wyden

# NAYS—49

Alexander  
Allard  
Allen  
Bennett  
Bond  
Bunning  
Burns  
Campbell  
Chafee  
Chambliss  
Cochran  
Coleman  
Conrad  
Cornyn  
Craig  
Crapo  
DeWine

Dole  
Domenici  
Ensign  
Enzi  
Fitzgerald  
Frist  
Graham (SC)  
Grassley  
Gregg  
Hagel  
Hatch  
Hutchison  
Inhofe  
Kyl  
Lott  
Lugar  
McCain

McConnell  
Miller  
Murkowski  
Nickles  
Roberts  
Santorum  
Sessions  
Shelby  
Smith  
Stevens  
Sununu  
Talent  
Thomas  
Voinovich  
Warner

# NOT VOTING—2

Brownback Kerry

The PRESIDING OFFICER. On this question, the ayes are 49, the nays are 49. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. WARNER. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Chair sustains the point of order and the amendment falls.

## AMENDMENT NO. 3472

The PRESIDING OFFICER. Under the previous order, the next vote is on the McConnell amendment numbered 3472 on which the yeas and nays have been ordered.

Under the previous order, there will be 2 minutes of debate evenly divided.

Mr. REID. Mr. President, this is a 10-minute vote, is that right?

The PRESIDING OFFICER. The Senator is correct. Under the previous order, subsequent votes will be 10 minutes in length.

Mr. KENNEDY. Parliamentary inquiry: I understand under the previous agreement we are going to have two votes. The first vote will be on the McConnell amendment and the second vote on the Kennedy amendment?

The PRESIDING OFFICER. Under the previous order there are several pending votes. The next vote after the McConnell amendment will be on the Kennedy amendment.

Who yields time?

Mr. MCCONNELL. Mr. President, let me describe why the McConnell amendment is preferable to the Kennedy amendment. My colleagues will be given an opportunity in the next few minutes to vote on two approaches to administration reporting on Iraq. The Kennedy troop estimate requirement is entirely too burdensome. We cannot predict troop levels 5 years in advance. No one is that good. Political developments in Iraq will drive security estimates so we cannot determine now what our needs are going to be years in advance.

KENNEDY's 30-day requirement would not give the Department of Defense enough time to staff a report, much less complete one.

I recommend voting for the McConnell alternative which is a reasonable reporting requirement from the Defense Department related to Iraq.

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

The Senator from Massachusetts is recognized for 1 minute.

Mr. KENNEDY. Mr. President, this is for 1 year. June 30th, sovereignty is transferred to the Iraqis. American families are entitled to know how long their sons and daughters are going to serve in Iraq. This is asking for an estimate of how long their sons and daughters are going to be there. They will make that judgment 30 days after this bill is passed into law, then 6 months, and then a year. American families who have sons and daughters serving in Iraq need to have some estimate about how long they are going to be there. The American people are entitled to that, too.

Finally, we have followed this similar kind of reporting with regard to Bosnia in the past. This is an appropriate request. American families and the American people are entitled to it and the Iraqi people are entitled to it, as well.

The PRESIDING OFFICER. The Senator's time has expired. Under the previous order, the vote occurs on agreeing to the McConnell amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. BROWNBACK) is necessarily absent.

I further announce that if present and voting the Senator from Kansas (Mr. BROWNBACK) would vote "yes."

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The result was announced—yeas 71, nays 27, as follows:

[Rollcall Vote No. 137 Leg.]

## YEAS—71

Alexander  
Allard  
Allen  
Bayh  
Bennett  
Bond  
Bunning  
Burns  
Byrd  
Campbell  
Cantwell  
Carper  
Chafee  
Chambliss  
Clinton  
Cochran  
Coleman  
Collins  
Conrad  
Cornyn  
Craig  
Crapo  
DeWine  
Dole

Domenici  
Dorgan  
Edwards  
Ensign  
Enzi  
Feinstein  
Fitzgerald  
Frist  
Graham (SC)  
Grassley  
Gregg  
Hagel  
Hatch  
Hutchison  
Inhofe  
Kohl  
Kyl  
Lieberman  
Lincoln  
Lott  
Lugar  
McCain  
McConnell  
Mikulski

Miller  
Murkowski  
Murray  
Nelson (FL)  
Nelson (NE)  
Nickles  
Roberts  
Rockefeller  
Santorum  
Schumer  
Sessions  
Shelby  
Smith  
Snowe  
Specter  
Stabenow  
Stevens  
Sununu  
Talent  
Thomas  
Voinovich  
Warner  
Wyden

## NAYS—27

Akaka  
Baucus

Biden  
Bingaman

Boxer  
Breaux

Corzine  
Daschle  
Dayton  
Dodd  
Durbin  
Feingold  
Graham (FL)

Harkin  
Hollings  
Inouye  
Jeffords  
Johnson  
Kennedy  
Landrieu

Lautenberg  
Leahy  
Levin  
Pryor  
Reed  
Reid  
Sarbanes

## NOT VOTING—2

Brownback Kerry

The amendment (No. 3472) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## AMENDMENT NO. 3377

The PRESIDING OFFICER. Under the previous order, the vote will now occur on agreeing to Kennedy amendment No. 3377. This will be preceded by 2 minutes of debate evenly divided.

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, if you liked the McConnell amendment, you have to love the Kennedy amendment because the McConnell amendment took our initial amendment and eliminated estimating the numbers of American troops that are going to be necessary after Iraq reaches sovereignty. That is the principal difference.

It does seem to me that after Iraq gets sovereignty on June 30, every American family, whether it is those who have sons or daughters serving in Iraq, is entitled to the best judgment—and this is an estimate—the best judgment on the number of troops we are going to have serve in Iraq. That is clear and simple. It is an estimate. There are clear examples where we have done that in the past. We are talking about estimating the number of American troops that will serve in Iraq. We have done that time in and time out. That is what the Kennedy amendment would do, embracing the best parts of the McConnell amendment. You can have it all this afternoon in the U.S. Senate.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, the argument remains the same as it was a few moments ago. The question is whether we can require the Defense Department to predict that which cannot be known. No one knows what the future troop estimate is going to be. We can't predict troop levels 5 years in advance. The Senator from Massachusetts is trying to require the Defense Department to report something that no Defense Department could possibly report. Therefore, the Kennedy amendment ought to be opposed.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to amendment No. 3377.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. BROWNBACK) is necessarily absent.

I further announce that if present and voting the Senator from Kansas (Mr. BROWNBACK) would vote "nay."

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The result was announced—yeas 48, nays 50, as follows:

[Rollcall Vote No. 138 Leg.]

#### YEAS—48

|          |             |             |
|----------|-------------|-------------|
| Akaka    | Dorgan      | Leahy       |
| Baucus   | Durbin      | Levin       |
| Bayh     | Edwards     | Lincoln     |
| Biden    | Feingold    | McCain      |
| Bingaman | Feinstein   | Mikulski    |
| Boxer    | Graham (FL) | Murray      |
| Breaux   | Hagel       | Nelson (FL) |
| Byrd     | Harkin      | Nelson (NE) |
| Cantwell | Hollings    | Pryor       |
| Carper   | Inouye      | Reed        |
| Clinton  | Jeffords    | Reid        |
| Conrad   | Johnson     | Rockefeller |
| Corzine  | Kennedy     | Sarbanes    |
| Daschle  | Kohl        | Schumer     |
| Dayton   | Landrieu    | Stabenow    |
| Dodd     | Lautenberg  | Wyden       |

#### NAYS—50

|           |             |           |
|-----------|-------------|-----------|
| Alexander | Dole        | Miller    |
| Allard    | Domenici    | Murkowski |
| Allen     | Ensign      | Nickles   |
| Bennett   | Enzi        | Roberts   |
| Bond      | Fitzgerald  | Santorum  |
| Bunning   | Frist       | Sessions  |
| Burns     | Graham (SC) | Shelby    |
| Campbell  | Grassley    | Smith     |
| Chafee    | Gregg       | Snowe     |
| Chambliss | Hatch       | Specter   |
| Cochran   | Hutchison   | Stevens   |
| Coleman   | Inhofe      | Sununu    |
| Collins   | Kyl         | Talent    |
| Cornyn    | Lieberman   | Thomas    |
| Craig     | Lott        | Voinovich |
| Crapo     | Lugar       | Warner    |
| DeWine    | McConnell   |           |

#### NOT VOTING—2

Brownback Kerry

The amendment (No. 3377) was rejected.

Mr. WARNER. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### AMENDMENT NO. 3353

The PRESIDING OFFICER. Under the previous order, a vote will now occur on the Reed amendment to be preceded by 2 minutes of debate equally divided.

The Senator from Rhode Island.

Mr. REED. Mr. President, I ask unanimous consent that Senator CORZINE be added as a cosponsor.

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

Mr. REID. Mr. President, for years, the plan for missile defense, which is placed in Alaska, provided for 20 interceptors. Suddenly, this year the administration asked for 10 additional interceptors. My amendment will simply fence the acquisition of these interceptors pending operational testing. These interceptors and their warheads have never been used in interceptor tests. They are virtually untested.

The underlying amendment would allow for the acquisition but would condition that on operational testing. I think we will learn a lot from operational testing. I think we should have operational testing. The question is, Why do we want to buy 10 additional

interceptors until we learn what we must before we commit to this \$500 million acquisition?

I hope my colleagues will support me in this effort.

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

Who seeks time in opposition?

The Senator from Virginia is recognized for 1 minute.

Mr. WARNER. Mr. President, I say to colleagues, in all candor, this is the third vote on the same issue. They have addressed the issues in this amendment on two occasions, and by significant margin we have decided to reject in any way taking the Missile Defense Program and changing it at this time. They voted on the Levin amendment and rejected it. They voted on my amendment, which was to an earlier Reed amendment on much the same principle, and rejected the amendment of the Senator from Rhode Island.

I say to my colleagues we have to have some consistency. Regrettably, we are asked for a third vote on the same issue. I strongly urge my colleagues to reject this amendment.

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

The question is on agreeing to amendment No. 3353. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. BROWNBACK) is necessarily absent.

I further announce that if present and voting the Senator from Kansas (Mr. BROWNBACK) would vote "nay."

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The result was announced—yeas 45, nays 53, as follows:

[Rollcall Vote No. 139 Leg.]

#### YEAS—45

|          |             |             |
|----------|-------------|-------------|
| Akaka    | Dorgan      | Leahy       |
| Baucus   | Durbin      | Levin       |
| Biden    | Edwards     | Lincoln     |
| Bingaman | Feingold    | Mikulski    |
| Boxer    | Feinstein   | Murray      |
| Breaux   | Graham (FL) | Nelson (FL) |
| Byrd     | Harkin      | Nelson (NE) |
| Cantwell | Hollings    | Pryor       |
| Carper   | Inouye      | Reed        |
| Clinton  | Jeffords    | Reid        |
| Conrad   | Johnson     | Rockefeller |
| Corzine  | Kennedy     | Sarbanes    |
| Daschle  | Kohl        | Schumer     |
| Dayton   | Landrieu    | Stabenow    |
| Dodd     | Lautenberg  | Wyden       |

#### NAYS—53

|           |            |             |
|-----------|------------|-------------|
| Alexander | Coleman    | Graham (SC) |
| Allard    | Collins    | Grassley    |
| Allen     | Cornyn     | Gregg       |
| Bayh      | Craig      | Hagel       |
| Bennett   | Crapo      | Hatch       |
| Bond      | DeWine     | Hutchison   |
| Bunning   | Dole       | Inhofe      |
| Burns     | Domenici   | Kyl         |
| Campbell  | Ensign     | Lieberman   |
| Chafee    | Enzi       | Lott        |
| Chambliss | Fitzgerald | Lugar       |
| Cochran   | Frist      | McCain      |

|           |          |           |
|-----------|----------|-----------|
| McConnell | Sessions | Sununu    |
| Miller    | Shelby   | Talent    |
| Murkowski | Smith    | Thomas    |
| Nickles   | Snowe    | Voinovich |
| Roberts   | Specter  | Warner    |
| Santorum  | Stevens  |           |

#### NOT VOTING—2

Brownback Kerry

The amendment (No. 3353) was rejected.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### AMENDMENT NO. 3423

The PRESIDING OFFICER. Under the previous order, the vote will now occur on the Byrd amendment to be preceded by 2 minutes of debate equally divided. The Senate will come to order.

The Senator from West Virginia is recognized to speak for 1 minute on his amendment.

Mr. BYRD. Mr. President, this amendment increases U.S. support for Plan Colombia. My amendment raises the cap on the number of U.S. military and civilian personnel who can participate in Plan Colombia. My amendment fully supports Colombia's war against drug trafficking and narcoterrorists.

The difference between this amendment and the administration proposal contained in the bill is that my amendment is intended to meet immediate requirements whereas the administration is projecting future requirements. My amendment increases the military and civilian caps from 400 to 500 each. The administration's proposal doubles the troop cap from 400 to 800 and increases the civilian cap from 400 to 600. By their own admission, that is far more than either the State or Defense Department need in Colombia next year.

The administration wants flexibility. I believe Congress should insist on accountability and oversight. U.S. military forces are already stretched to the breaking point across the globe. U.S. troops in Iraq are being forced to extend their tours as a result of stop-loss orders. Prospects remain strong that thousands upon thousands of American troops will be needed to quell the violence in Iraq for years to come.

This is not the time, Colombia is not the place, for yet another large increase in the deployment of U.S. forces overseas. My amendment is a responsible approach to support the worthy goals of Plan Colombia while maintaining congressional oversight on what is an increasingly complex and dangerous mission. I urge my colleagues to support the amendment.

The PRESIDING OFFICER. The time of the Senator has expired. Who seeks time in opposition?

The Senator from Virginia.

Mr. WARNER. Mr. President, I urge colleagues to give the most careful consideration to this amendment. How well each of us knows the fragility of

## EXECUTIVE SESSION

the Central American band of countries. Colombia has shown the fortitude, the courage, the strength, the sacrifice to take on adversity and they have met with success. This is a very modest number increase in troops, essential at this time to keep that forward momentum going. I strongly urge that you vote against the Byrd amendment.

The PRESIDING OFFICER. All time having been yielded back, under the previous order, the question occurs on agreeing to the Byrd amendment on which the yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL, I announce that the Senator from Kansas (Mr. BROWNBACK) is necessarily absent.

I further announce that if present and voting the Senator from Kansas (Mr. BROWNBACK) would vote "nay."

Mr. REID, I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The result was announced—yeas 40, nays 58, as follows:

[Rollcall Vote No. 140 Leg.]

## YEAS—40

|          |            |             |
|----------|------------|-------------|
| Akaka    | Durbin     | Levin       |
| Baucus   | Edwards    | Lincoln     |
| Biden    | Feingold   | Mikulski    |
| Bingaman | Fitzgerald | Murray      |
| Boxer    | Harkin     | Pryor       |
| Breaux   | Hollings   | Reed        |
| Byrd     | Inouye     | Reid        |
| Cantwell | Jeffords   | Rockefeller |
| Carper   | Johnson    | Sarbanes    |
| Conrad   | Kennedy    | Schumer     |
| Corzine  | Kohl       | Stabenow    |
| Daschle  | Landrieu   | Wyden       |
| Dayton   | Lautenberg |             |
| Dorgan   | Leahy      |             |

## NAYS—58

|           |             |             |
|-----------|-------------|-------------|
| Alexander | Dole        | Miller      |
| Allard    | Domenici    | Murkowski   |
| Allen     | Ensign      | Nelson (FL) |
| Bayh      | Enzi        | Nelson (NE) |
| Bennett   | Feinstein   | Nickles     |
| Bond      | Frist       | Roberts     |
| Bunning   | Graham (FL) | Santorum    |
| Burns     | Graham (SC) | Sessions    |
| Campbell  | Grassley    | Shelby      |
| Chafee    | Gregg       | Smith       |
| Chambliss | Hagel       | Snowe       |
| Clinton   | Hatch       | Specter     |
| Cochran   | Hutchison   | Stevens     |
| Coleman   | Inhofe      | Sununu      |
| Collins   | Kyl         | Talent      |
| Cornyn    | Lieberman   | Thomas      |
| Craig     | Lott        | Voivovich   |
| Crapo     | Lugar       | Warner      |
| DeWine    | McCain      |             |
| Dodd      | McConnell   |             |

## NOT VOTING—2

Brownback Kerry

The amendment (No. 3423) was rejected.

Mr. WARNER, I move to reconsider the vote.

Mr. SANTORUM, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

# NOMINATION OF JUAN R. SANCHEZ TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. Under the previous order, the Senate will now move to executive session.

The clerk will report.

The legislative clerk read the nomination of Juan R. Sanchez, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania.

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate on the nomination equally divided.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the first nomination is Juan Sanchez. He was born in Puerto Rico. He immigrated to the United States. This is a great Horatio Alger's success story. He was educated at City College of New York, bachelor's degree with cum laude. He is a graduate of the University of Pennsylvania Law School. He has been in the private practice of law and has performed community service in the Legal Aid Society for the last 5 years. He has been a common pleas judge in Chester County, PA.

He brings outstanding credentials and is a product of the nominating panel organized by my distinguished colleague, Senator SANTORUM, and myself.

I yield to my colleague.

The PRESIDING OFFICER. The junior Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I am pleased to support the confirmation of Judge Juan R. Sanchez to the U.S. District Court, Eastern District of Pennsylvania. I thank the President for his nomination of this excellent candidate and to congratulate Judge Sanchez and his family.

Judge Sanchez is a cum laude graduate of the City College of the City University of New York. He received his law degree from the University of Pennsylvania Law School in 1981. Since 1998, he has served as a judge on the Court of Common Pleas, 15th Judicial District of Pennsylvania in West Chester, PA.

Judge Sanchez brings to the bench wide-ranging legal experience. He served as a staff attorney for Legal Aid of Chester County in West Chester, PA, from 1981 to 1983. He had a general legal practice and was a partner with Nester, Nester & Sanchez from 1983 to 1990. He as a sole practitioner from 1990 to 1997. Judge Sanchez also served as a senior trial attorney at MacElree, Harvey, Gallagher, Featherman & Sebastian. Judge Sanchez serves as an adjunct professor at West Chester University, Immaculata University, and Villanova University School of Law.

Judge Sanchez has served his community in numerous ways. He has

served on the board of Centro Guayacan, a multicultural educational community center, Riverside Care of Chester County, Chester County Hospital, the YMCA of Central Chester County and the YMCA of Brandywine Valley, the Volunteer English Program in Chester County, and Community Volunteers in Medicine. He has also served as a commissioner for the Housing Authority of Chester County and as an advisor to the United Way of Chester County. He has received several awards for his service as a judge and his service to the community.

Again, I express my strong support for his nomination. I thank Judge Sanchez for his willingness to serve Pennsylvania on the Federal bench. I look forward to his approval by the Senate and urge my colleagues to support his confirmation.

In addition to what Senator SPECTER said, this man has made a tremendous contribution to the Hispanic community in Chester County and has done a lot in the strengthening and building of that community. He has great legal talent to go along with it. He is truly an extraordinary person, will be an extraordinary judge, and has been an extraordinary judge in Chester County.

Mr. LEAHY. Mr. President, I note by this vote that 20 of the 44 active Federal circuit court district judges from Pennsylvania will be made up of nominees of President Bush. I mention this because some think that somehow he has not been able to get a lot of nominations through. This is a sharp contrast to the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate when President Clinton was in the White House. Republicans denied votes to nine districts and one circuit court nominee of President Clinton in Pennsylvania. That was notwithstanding the very honest due diligence of the senior Senator from Pennsylvania, Mr. SPECTER, who tried to get them confirmed. Others in his party blocked a vote. I do not want to see that happen again in Pennsylvania.

Today the Senate considers the nomination of Juan Ramon Sanchez to be a United States District Judge for the Eastern District of Pennsylvania. I am glad that the Republican majority has finally decided to proceed to this well-qualified Hispanic nominee, since they departed from the order of the Executive Calendar last week and did not schedule a confirmation vote for Mr. Sanchez, despite the fact that he would have received unanimous Democrat support.

Judge Sanchez has served as a judge on the Court of Common Pleas in Chester County, PA since 1998. Prior to that, he worked for Legal Aid of Chester County, in private practice, and as a senior trial attorney with the Chester County Public Defender's Office. Judge Sanchez has devoted a substantial amount of time to pro bono work in his community and, in particular, to assisting Latino individuals and groups

in various legal matters, including housing, employment, and immigration. He has also served on the Pennsylvania Supreme Court's Committee on Racial and Gender Bias in the Justice System and the Racial Ethnic Bias Implementation Committee of the Judicial Council.

While some people have accused Democrats of being anti-Hispanic, our record of confirming Hispanic nominees is excellent. Judge Sanchez is the 18th Latino confirmed to the Federal courts in the past three years. With the exception of Mr. Estrada, who failed to answer many questions and provide the Senate with his writings and views, we have pressed forward to confirm all of the other Latinos whose nominations have been reported to the floor. Democrats have supported the swift confirmation of 18 of President Bush's 22 Latino nominees.

While President Clinton nominated 11 Latino nominees to Circuit Court positions, three of those 11 were blocked by the Republican Senate and never given a vote. President Bush has only nominated four Latino nominees to Circuit Court positions, three of whom have been confirmed with Democratic support. President Bush's 22 Latino nominees constitute less than 10 percent of his nominees, even though Latinos make up a larger percentage of the U.S. population.

It is revealing that this President has nominated more people associated with the Federalist Society than Hispanics, African Americans and Asian Americans, combined. While President Clinton cared deeply about diversity on the Federal bench, this President is more interested in narrow and slanted judicial ideology. Forty-five of President Bush's nominees to the Federal courts have been actively involved, either as members or speakers, in the Federalist Society.

The Federalist Society is sometimes mischaracterized as a mere debating society, but according to its own statement of purpose, it is a group with a point of view: "The Federalist Society for Law and Public Policy Studies is a group of conservatives and libertarians interested in the current state of the legal order." One of the goals of the Federalist Society is the "reordering of priorities within the legal system."

The administration wants to have it both ways. They want to take credit with the Federalist Society and hard-right conservatives when they nominate ideological nominees, but they want to pretend that ideology does not matter. If ideology does not matter to the President, why has he nominated more members of the Federalist Society than he has members of minority groups? The President has shown that he is steadfastly committed to packing the courts with individuals who will shape the bench according to his ideological goals rather than creating courts that are fair, balanced, independent, and reflective of the diversity within our country.

A look at the Federal judiciary in Pennsylvania demonstrates yet again that President Bush's nominees have been treated far better than President Clinton's and shows dramatically how Democrats have worked in a bipartisan way to fill vacancies, despite the fact that Republicans blocked more than 60 of President Clinton's judicial nominees. With this confirmation, 20 of President Bush's nominees to the Federal courts in Pennsylvania will have been confirmed, more than for any other state.

With this confirmation, President Bush's nominees will make up 20 of the 44 active Federal circuit and district court judges for Pennsylvania—that is more than 40 percent of the Pennsylvania Federal bench. On the Pennsylvania district courts alone, President Bush's influence is even stronger, as his nominees will now hold 17 of the 36 active seats. In other words, nearly half of the district court seats in Pennsylvania will be held by President Bush's appointees. Republican appointees will outnumber Democratic appointees by nearly two to one.

This is in sharp contrast to the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate when President Clinton was in the White House. Republicans denied votes to nine district and one circuit court nominees of President Clinton in Pennsylvania alone. Despite the efforts and diligence of the senior Senator from Pennsylvania, Senator SPECTER, to secure the confirmation of all of the judicial nominees from every part of his home state there were 10 nominees by President Clinton to Pennsylvania vacancies who never got a vote. Despite records that showed these to be well-qualified nominees, many of their nominations sat pending before the Senate for more than a year without being considered. Such obstruction provided President Bush with a significant opportunity to shape the bench according to his partisan and ideological goals.

New articles in Pennsylvania have highlighted the way that President Bush has been able to reshape the Federal bench in Pennsylvania. For example, The Philadelphia Inquirer, observed that the significant number of vacancies on the Pennsylvania courts "present Republicans with an opportunity to shape the judicial makeup of the court for years to come."

Like other nominees of President Bush, Judge Sanchez has been very involved in the Republican party. He has assured me that he will be fair to all those who come before him. I hope that he will follow the law and treat all who appear before him fairly regardless of their ideology or party affiliation.

I congratulate Mr. Sanchez and his family today on his confirmation.

Mr. HATCH. Mr. President, I am pleased today to speak in support of Juan Sanchez, who has been nominated to be a United States District Judge for the Eastern District of Pennsylvania.

Judge Sanchez is exceptionally qualified for the Federal bench. He presently serves on the Court of Common Pleas in the 15th Judicial District of Pennsylvania, having been elected to that position in 1997.

Upon graduating from the University of Pennsylvania Law School in 1981, he became a staff attorney for Legal Aid of Chester County. Two years later, he joined the Chester County Public Defender's Office as a senior trial attorney—a position that he retained until 1997. During that period, Judge Sanchez also worked for two law firms and as a sole practitioner, representing Spanish-speaking individuals in a wide variety of legal areas.

Judge Sanchez has dedicated his career to serving the disadvantaged in Chester County, PA, and his impressive credentials are reflected in his unanimous "Well Qualified" rating by the American Bar Association.

Judge Sanchez is an extremely well-qualified nominee. I am confident that he will be a fine addition to the bench and urge my colleagues to join me in supporting his confirmation.

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

The PRESIDING OFFICER (Mr. CORNYN). Is there a sufficient second? There is a sufficient second.

The question is, will the Senate advise and consent to the nomination of Juan R. Sanchez, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. BROWNBACK) is necessarily absent.

I further announce that if present and voting the Senator from Kansas (Mr. BROWNBACK) would vote "yea".

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 141 Ex.]

#### YEAS—98

|           |             |            |
|-----------|-------------|------------|
| Akaka     | Conrad      | Hagel      |
| Alexander | Cornyn      | Harkin     |
| Allard    | Corzine     | Hatch      |
| Allen     | Craig       | Hollings   |
| Baucus    | Crapo       | Hutchison  |
| Bayh      | Daschle     | Inhofe     |
| Bennett   | Dayton      | Inouye     |
| Biden     | DeWine      | Jeffords   |
| Bingaman  | Dodd        | Johnson    |
| Bond      | Dole        | Kennedy    |
| Boxer     | Domenici    | Kohl       |
| Breaux    | Dorgan      | Kyl        |
| Bunning   | Durbin      | Landrieu   |
| Burns     | Edwards     | Lautenberg |
| Byrd      | Ensign      | Leahy      |
| Campbell  | Enzi        | Levin      |
| Cantwell  | Feingold    | Lieberman  |
| Carper    | Feinstein   | Lincoln    |
| Chafee    | Fitzgerald  | Lott       |
| Chambliss | Frist       | Lugar      |
| Clinton   | Graham (FL) | McCain     |
| Cochran   | Graham (SC) | McConnell  |
| Coleman   | Grassley    | Mikulski   |
| Collins   | Gregg       | Miller     |

|             |             |           |
|-------------|-------------|-----------|
| Murkowski   | Rockefeller | Stabenow  |
| Murray      | Santorum    | Stevens   |
| Nelson (FL) | Sarbanes    | Sununu    |
| Nelson (NE) | Schumer     | Talent    |
| Nickles     | Sessions    | Thomas    |
| Pryor       | Shelby      | Voinovich |
| Reed        | Smith       | Warner    |
| Reid        | Snowe       | Wyden     |
| Roberts     | Specter     |           |

## NOT VOTING—2

Brownback Kerry

The nomination was confirmed.

# NOMINATION OF WALTER D. KELLEY, JR. TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

The PRESIDING OFFICER. The clerk will state the nomination.

The assistant legislative clerk read the nomination of Walter D. Kelley, of Virginia to be United States District Judge for the Eastern District of Virginia.

Mr. WARNER. Mr. President, the chairman of the Judiciary Committee is here. Senator ALLEN and I need to have a few minutes together.

There is no greater responsibility as a Senator than selecting for recommendation to a President our nominees to the Federal judiciary. I have known Mr. Kelley for many years. He graduated cum laude from my alma mater, Washington and Lee University. After working for a year as a press secretary to a member of the U.S. House of Representatives, he returned to Washington and Lee and earned his law degree magna cum laude.

Subsequent to law school, Mr. Kelley served as a law clerk to a judge on the U.S. Court of Appeals for the Second Circuit in New York City. We are fortunate that when he completed his clerkship, Mr. Kelley returned home to Norfolk, VA, where he practiced law with great distinction.

Article II, Section 2 of the Constitution provides the President with the authority to nominate, with the "Advice and Consent of the Senate," individuals to serve as judges on the Federal courts. Thus, the Constitution provides a role for both the President and the Senate in this process. The President has the power to nominate, and the Senate has the power to render "Advice and Consent" on the nomination.

In fulfillment of this constitutional responsibility, after Judge Morgan of the Eastern District of Virginia bench took senior status, Senator ALLEN and I had the honor of recommending Walter Kelley to President Bush to fill that vacancy. After reviewing our recommendations, President Bush nominated Mr. Kelley.

Mr. Kelley's nomination was subsequently received by the Senate, and in a timely fashion, the Senate Judiciary Committee provided its unanimous approval of this nominee. I am grateful to Chairman HATCH and Senator LEAHY for their hard work in moving this nomination forward. And, I am grateful

to the leadership on both sides of the aisle for bringing Mr. Kelley's nomination before the full Senate.

When Senator ALLEN and I first learned of the vacancy on the Eastern District of Virginia bench, we began our search to find the most qualified and well-respected individual to fill that vacancy. During that process, one name repeatedly was brought up. That name was Walt Kelley.

Walt Kelley graduated with his bachelor's degree, cum laude, in 1977 from my alma mater, Washington & Lee University. Then, after working for a year as a Press Secretary to a member of the United States House of Representatives, he returned to Washington & Lee and earned his law degree, magna cum laude.

Subsequent to law school, Mr. Kelley served as a law clerk to a judge on the United States Court of Appeals for the Second Circuit, in New York City. We are fortunate in Virginia that after he completed his clerkship, Mr. Kelley returned to his home town of Norfolk, VA to practice law.

Since then, for the past 22 years, Walt Kelley has practiced law for two of Virginia's best law firms, Wilcox & Savage PC, and Troutman Sanders LLP. During these two decades plus of his legal career, his practice has focused primarily on complex business litigation before the Federal courts.

Moreover, during these 22 years, Mr. Kelley has earned a reputation for not only being one of the best lawyers in Virginia, but also being one of the best lawyers in America. Each year, since 1997, he has been listed in *The Best Lawyers in America* for business litigation. This is a publication that lists the "best" lawyers in America based on the recommendations of other lawyers all across America.

But, not only is Mr. Kelley dedicated to his family and to his legal career, he also has taken the time to give back to his community. In addition to other community activities, he is a member and the former rector of the Old Dominion University Board of Visitors in Norfolk, VA, and he is a member of the Virginia Business Higher Education Council.

Mr. President, Walt Kelley has my strong support and the strong support of Senator ALLEN. In addition, he has the support of Virginia's legal community. The Virginia State Bar; Virginia Bar Association; the Virginia Association of Defense Attorneys; and the Norfolk & Portsmouth Bar Association all support Mr. Kelley's nomination. Furthermore, the American Bar Association has unanimously rated Mr. Kelley as "well qualified" for this judgeship.

I know that Walt Kelley is a fine nominee. If confirmed, he will serve on the bench in Virginia with distinction.

I urge my colleagues to support his nomination.

The PRESIDING OFFICER. The junior Senator from Virginia is recognized.

Mr. ALLEN. Mr. President, I join my colleague and friend, Senator WARNER,

in endorsing Walt Kelley for this judgeship for the U.S. District Court for the Eastern District of Virginia. I have known him for many decades. He is a patient man and an outstanding lawyer.

Senator WARNER and I interviewed many highly qualified candidates for that judgeship in the Eastern District of Virginia. Walt Kelley has extensive trial experience and, most importantly, has the right philosophy as a judge and will not invent the law but interpret it according to the facts.

I hope my colleagues will support his nomination.

Mr. HATCH. Mr. President, I rise today to express my strong support for the confirmation of Walter D. Kelley Jr. to serve as a judge for the United States District Court for the Eastern District of Virginia.

Mr. Kelley received both his undergraduate and his law degree, magna cum laude, from Washington and Lee University. Upon graduation from law school, he clerked for Judge Ellsworth Van Graafeiland on the Second Circuit.

In 1982, he joined the Norfolk, VA, law firm of Wilcox and Savage. Since 2001, he has been a partner at Troutman Sanders in Norfolk, where he practices in the area of business litigation with an emphasis on intellectual property and antitrust law.

Aside from his private practice, Mr. Kelley has devoted significant time to improving the legal community as a leader in bar activities. He has served as a mentor to younger attorneys, a quasi-judge of the Norfolk Circuit Court, and as a law professor. He also served on the Virginia Attorney General's Task Force on Higher Education; as rector and a member of Old Dominion University Board of Visitors; as a chairman and director of the Hampton Roads Board of the Salvation Army; and as a trustee of the Norfolk Collegiate School.

Walter Kelley is an extremely well-qualified nominee with a significant amount of litigation experience. The American Bar Association unanimously bestowed on him its highest rating of "Well Qualified," in recognition of his outstanding legal skills and reputation. He will make an excellent addition to the Federal bench and I urge my colleagues to join me in supporting his confirmation.

Mr. LEAHY. Mr. President, today we are asked to consider the nomination of Walter Kelley, Jr. to the Eastern District of Virginia. Mr. Kelley is currently a partner with the Norfolk office of the Troutman Sanders law firm. He has significant civil litigation experience. The ABA unanimously found Mr. Kelley to be well-qualified to be a district court judge. He also has the support of both of his home-State Senators.

It should be noted that Mr. Kelley has been very active in Republican politics over the past several decades. Mr. Kelley recently served as the Chairman of the Republican Party of Norfolk for



four years. He is currently involved in a Republican political action committee and serves as Director of the Downtown Republican Club. A few years ago, upon being elected Rector of the Old Dominion University Board of Visitors, Mr. Kelley was asked about the political nature of the position and politics in general, when he answered, "[i]f you really believe strongly in how it is you think Government should act with the citizenry . . . you can't sit on the sidelines and not be in the game. You're either in there trying to make happen that which you believe in, or you're ceding the whole debate to the other side."

I trust that Mr. Kelley will not believe that he can continue this advocacy as a judge. By taking his oath of office he will be expected to assume a position of impartiality and discard his previous partisan advocacy. Certainly, we can all agree that the Federal bench is not the place to advocate any agenda other than fairness.

I congratulate Mr. Kelley and his family on his confirmation today.

Mr. President, again, he had the highest ABA rating and is strongly supported by the two Senators from Virginia. I hope everybody on this side of the aisle will vote for him.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Shall the Senate advise and consent to the nomination of Walter D. Kelley, Jr., of Virginia, to be United States District Judge for the Eastern District of Virginia?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. BROWNBACK), the Senator from Utah (Mr. BENNETT), the Senator from Idaho (Mr. CRAPO), the Senator from Utah (Mr. HATCH), and the Senator from Oregon (Mr. SMITH) are necessarily absent.

I further announce that if present and voting the Senator from Kansas (Mr. BROWNBACK) would vote "yea."

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 142 Ex.]

YEAS—94

|           |           |            |
|-----------|-----------|------------|
| Akaka     | Campbell  | Dayton     |
| Alexander | Cantwell  | DeWine     |
| Allard    | Carper    | Dodd       |
| Allen     | Chafee    | Dole       |
| Baucus    | Chambliss | Domenici   |
| Bayh      | Clinton   | Dorgan     |
| Biden     | Cochran   | Durbin     |
| Bingaman  | Coleman   | Edwards    |
| Bond      | Collins   | Ensign     |
| Boxer     | Conrad    | Enzi       |
| Breaux    | Cornyn    | Feingold   |
| Bunning   | Corzine   | Feinstein  |
| Burns     | Craig     | Fitzgerald |
| Byrd      | Daschle   | Frist      |

|             |             |             |
|-------------|-------------|-------------|
| Graham (FL) | Levin       | Rockefeller |
| Graham (SC) | Lieberman   | Santorum    |
| Grassley    | Lincoln     | Sarbanes    |
| Gregg       | Lott        | Schumer     |
| Hagel       | Lugar       | Sessions    |
| Harkin      | McCain      | Shelby      |
| Hollings    | McConnell   | Snowe       |
| Hutchison   | Mikulski    | Specter     |
| Inhofe      | Miller      | Stabenow    |
| Inouye      | Murkowski   | Stevens     |
| Jeffords    | Murray      | Sununu      |
| Johnson     | Nelson (FL) | Talent      |
| Kennedy     | Nelson (NE) | Thomas      |
| Kohl        | Nickles     | Voinovich   |
| Kyl         | Pryor       | Warner      |
| Landrieu    | Reed        | Wyden       |
| Lautenberg  | Reid        |             |
| Leahy       | Roberts     |             |

NOT VOTING—6

|           |       |       |
|-----------|-------|-------|
| Bennett   | Crapo | Kerry |
| Brownback | Hatch | Smith |

The nomination was confirmed.

The PRESIDING OFFICER. The President will be notified of the Senate's action.

#### LEGISLATIVE SESSION

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

#### COSPONSORSHIP—S. 1246

Mr. ROBERTS. I ask unanimous consent that Senator JOHN BREAUX be added as a cosponsor to a bill I introduced on June 12, 2003, S. 1246, to permit charitable and educational organizations to make collegiate housing and infrastructure grants and continue to be treated as tax-exempt organizations.

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

#### UNANIMOUS CONSENT AGREEMENT—S. 2062

Mr. FRIST. Mr. President, briefly I have a consent regarding the class action legislation which has been cleared on both sides. Before proceeding, I remind everyone that an earlier order provided we would proceed to the class action legislation following completion of Defense authorization, which I expect we will be able to complete today. However, we now have a Defense appropriations bill available and it is vitally important for us to proceed with that bill to ensure no disruption in funds to our troops. Having said that, this agreement will allow us to proceed to the class action legislation without any procedural hurdles following the Defense appropriations bill.

Therefore, I now ask unanimous consent that the previous order with respect to Calendar No. 430, S. 2062, the class action bill, be vitiated and further that the Senate proceed to its consideration following the disposition of the Defense appropriations bill.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Reserving the right to object, I want to make sure I understand. The majority leader is proposing that we go to class action immediately following the completion of our work on the Defense appropriations bill; is that correct?

Mr. FRIST. Mr. President, that is correct. The clarification I made was that initially we would follow the Defense authorization with class action. Now in effect what we are doing is we are going to finish the Defense authorization today, go to Defense appropriations, to be followed by class action.

Mr. DASCHLE. Mr. President, I appreciate that. I have made it clear I am not a supporter of the class action bill, but I have made a commitment to many of the colleagues in my caucus with regard to the assurances we have provided to them in the past that they would have a chance to have this legislation brought before the Senate and offer the appropriate amendments. They have been very patient. We have asked them to delay consideration of this bill now on several occasions, but with the assurances given by the majority leader, I have no objection.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Reserving the right to object, I will not object, I express my thanks to both leaders for that colloquy and this brief discussion we have had. As both leaders know, the movement of this legislation is a priority for a number of us, certainly for me, and I am gratified that once we have disposed of the Defense appropriations bill, the next bill we will turn to is class action. I express my thanks to the majority leader for making that clear, and to the Democratic leader, Senator DASCHLE, for his steadfast position, realizing this is not legislation that is at the top of his list of priorities.

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

#### TRIBUTE TO MATTHEW "MATTIE" JOSEPH THADEUS STEPANEK

Ms. MIKULSKI. Mr. President, I rise to inform my colleagues and all who are watching that a wonderful American passed away yesterday. He was a 13-year-old boy who lost his life to muscular dystrophy. He was known to the world because of his many appearances on radio and TV reading his poetry. His name was Matthew Joseph Thadeus Stepanek. The world knew him as "Mattie."

Though this young man's death is a great tragedy, his life was a triumph. At age 13, he was a gifted author. He was even a noted peacemaker. He took a personal challenge and turned it into a life of inspiration for all of us.

Mattie Stepanek once said, "I want my message to live beyond me," and it certainly will. His message of peace and hope has reached millions.

He was born in 1990 in Upper Marlboro, MD, and doctors did not expect him to live more than 24 hours. He suffered from a rare form of muscular dystrophy. He had two brothers and a sister, all who died before the age of 4. His own mom also has muscular dystrophy.

Though the disease would eventually render him unable to walk or breathe

on his own, he was more than a survivor. He began writing poetry at the age of 3; poems about hope, peace, love. His life philosophy was, "Remember to play after every storm." And he did.

Mattie believed wishes could come true. Once when he was near death, he said he had three wishes. He wanted to talk to Jimmy Carter; he wanted to have his book of poems published; and he wanted to see his poetry read on Oprah.

Guess what. All three happened. President Carter did call him and talk to him several times. He wrote several volumes of poetry. I have one with me today called "Heartsongs." This book reached the best seller's list because it reached the hearts of so many people. As soon as Oprah heard it, she had not only read his poetry but had Mattie on the show.

He was so sick at times the doctors were afraid he wouldn't make it, but through hope and prayer his life was saved, one miracle at a time.

After the chaos and confusion and heartbreak of September 11 and the terrible anthrax attack on the Capitol, I was pretty grief stricken. One night watching C-SPAN, like so many Americans at the end of the day, I saw this wonderful young boy reading poetry. I found his words so inspirational, so touching, that I immediately contacted him through his hospital, the wonderful Children's Hospital here in Washington.

Through the hospital, I arranged a visit to him at his home in Upper Marlboro, Maryland. I visited with Mattie and his mom, in their apartment especially arranged for people who live a life in wheelchairs but refuse to be handicapped. We had a great time, talking about life. Mattie was so lively, so witty. He was so filled with enthusiasm. He was filled with energy.

I brought the book that I wrote and he had his. I did a little reading from mine and he read his poems. It was a great afternoon with this special boy, there he was in a special motorized wheelchair with a special apparatus that enabled him to breathe.

Later on, I went to the Children's Hospital to give him the Children's Hope Medal of Honor. This medal is given to young heroes who have shown valiant effort and courage in facing life's daily challenges when they have a chronic or life-threatening illness. If anyone deserved it, Mattie deserved it.

I want the world to know who this little boy is. I want to tell you first of all what he said about himself and then what he said to us in what then proved to be a farewell. This is the poem.

I am Mattie J.T. Stepanek.  
My body has light skin,  
Red blood, blue eyes, and blond hair.  
Since I have mitochondrial myopathy,  
I even have a trach, a ventilator, and oxygen.

Very poetic, I am, and very smart, too.  
I am always brainstorming ideas and stories.  
I am a survivor, but some day, I will see  
My two brothers and one sister in Heaven.  
When I grow up, I plan to become

A daddy, a writer, a public speaker,  
And most of all, a peacemaker.  
Whoever I am, and whatever happens,  
I will always love my body and mind,  
Even if it has different abilities  
Than other peoples' bodies and minds.  
I will always be happy, because  
I will always be me.

Isn't that great? But the last page in his book is "The Daily Gift."

You know what?  
Tomorrow is a new day.  
And today is a new day.  
Actually,  
Every day is a new day.  
Thank you, God,  
For all of these  
Special and new days.

Mr. President, thank God for Mattie Stepanek and thank God for a loving, wonderful mother, Jeni Stepanek. Our hearts go out to express our condolences and our sympathy to her for all of the heartache she has had to endure. But we thank her for giving us this very special gift, Mattie Stepanek, who truly sang from his heart and was a peacemaker.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I thank the distinguished Senator from Maryland for what she had to say. My wife and I got to know Mattie. My wife invited him to speak at the spouses dinner, the First Lady's luncheon. She told me I had to come down and meet this young man. I remember coming in there and talking with him. I also talked with him again by phone. I sort of hung back because I was not a Senate spouse. I sort of hung back in the corner and listened when he spoke. What an inspirational little boy.

I know the tug I felt when I turned on the news this morning and heard what we all knew was going to happen had happened. He is no longer with us.

Somebody in the news said he probably had more life in that short span than most people have. The Senator from Maryland said similar things. In this case, it is true. He really had.

I thank her for her statement. I know Marcelle and I had our hearts enriched by having met him.

#### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

Mr. LEAHY. Mr. President, I have the floor, though I see the distinguished Senator from Virginia and, of course, I will yield to him if he is seeking the floor.

Mr. WARNER. Yes, Mr. President, I am seeking the floor at this point in time.

We have reached a juncture in the bill where the majority leader and the distinguished minority leader, together with the two managers, are trying to resolve what further business may occur on this bill. At this point in time I can only suggest to colleagues we are very close, hopefully, to resolving this matter. But until such time as we get

an indication on my side of the aisle of the ability with regard to the other side to reach constructive resolution of this matter, I am going to have to ask that a quorum be put in.

Mr. LEAHY. Mr. President, if the Senator—

Mr. WARNER. Reserving the right to the floor, I yield for a question from my colleague.

Mr. LEAHY. I wanted to accommodate the distinguished chairman, of course. I thought he was about to bring something up. I hope he would not put in a quorum call. I would like to speak about some of the matters that may be coming up later. I have been talking with him and Senator REID and Senator LEVIN. If it becomes ripe to make that agreement, naturally I would yield the floor immediately as I did for the chairman. But I find in the joys of allergies, my voice is fast disappearing and I would like to speak now while I know I can so speak.

Mr. WARNER. Mr. President, my good friend and I have done many things together. At this point in time, I think, in good faith, the leadership of the Senate, together with the two managers, has developed a construct. Until such time as that construct is put in place, I must say with due respect I will have to maintain the quorum call.

Mr. LEAHY. If the Senator will yield again before he did that? I note, as the Senator knows, I could be speaking now if I wanted to because I already had the floor and I could have refused to yield to him. I did not.

Mr. WARNER. I think you yielded to me.

Mr. LEAHY. I yielded to him, and had I not done that, of course I would have retained the floor and would have gone forth.

Yesterday we had hours upon hours of quorum calls. All I am suggesting is that I be allowed to continue, and at such point as the Senator reaches an agreement, I would, of course, yield to whomever wishes to make the unanimous consent request. Being unable to do that, I believe my courtesy in giving up the position I had has not been returned. But, of course, the Senator has the parliamentary right to do whatever he wants because he has the floor.

Mr. WARNER. Mr. President, I hope this is not a matter of courtesy. It is a matter of pure management of the bill. There has been a clear understanding between both sides, and I am abiding by the understanding on this side. I think this side has, in good faith, lived up to its commitments. From all I know, the manager on this side and the leadership on that side is doing everything to live up to their commitments.

Until that time, 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. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

#### MORNING BUSINESS

Mr. WARNER. Mr. President, I believe good progress is being made. I think there could be a proper utilization of the time. Given the structure of the understanding at the leadership level, which the Senator from Michigan and I are trying to maintain and will maintain, I would suggest that the Senate now go into a period of morning business with Senators to speak up to 15 minutes.

Mr. LEAHY. Twenty minutes.

Mr. WARNER. Let us say 15 minutes with the exception of the Senator from Vermont, who desires 20 minutes, and hopefully Senators who might wish to address issues relating to the bill can avail themselves of that opportunity. Would that be correct?

Mr. LEVIN. Reserving the right to object, I surely will not, it is our intent I believe at the end of this first period to have our structure put back in place—that we would immediately return to the bill and resolve it.

Mr. WARNER. That is correct.

Mr. President, at this point in time, is my unanimous consent request granted?

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. WARNER. Mr. President, I thank the distinguished Senator from Vermont for his usual courtesy.

Mr. LEAHY. Mr. President, I thank my friend from Virginia. For over a quarter of a century we have been accommodating each other. I refer to the distinguished senior Senator from Virginia as “my Senator” when I am away from home. I have had the privilege of living part time during the year in his beautiful State, and we have tried to accommodate each other. I think this is the easiest way out of it. Otherwise, we would be in a quorum call. I do thank him.

#### PRISONER ABUSE

Mr. LEAHY. Mr. President, I understand that at the time the Leahy amendment comes up, there is likely to be a tabling motion. It would be, in effect, a second-degree amendment offered by others on the Judiciary Committee.

The amendment would require the Attorney General to produce documents that the Judiciary Committee needs in order to conduct oversight of the Department of Justice.

The Judiciary Committee has to get to the bottom of the prisoner abuse scandal. Aspects of this scandal are within the jurisdiction of the Judiciary Committee. To get to the bottom of it, we require documents from the Attorney General.

What happens if we are blocked from that? I say to my friends that if they vote to block us from getting the docu-

ments we seek, what they are doing, whether intentionally or otherwise, is contributing to a coverup.

Let me explain why this amendment is so important. There has been much debate over the last several days and weeks about the abuse of foreign prisoners, and the guidance provided by the President's lawyers with regard to torture. This debate will continue for some time throughout our country, particularly as more courts-martial are held, with the facts emerging slowly, and as the White House releases only some of the documents that are needed to fully understand the origins of the scandal.

In the meantime, the Senate, the body that is supposed to be the conscience of the Nation, should act. There are some very basic things we can do to clarify U.S. policy regarding the treatment of foreign prisoners. We can bring greater transparency to this issue. That is what my amendment does. It is very straightforward, with three basic sections.

First, it lays out U.S. policy with regard to the treatment of prisoners. Second, it establishes basic reporting requirements to which the Congress and the American people are entitled. Finally, it sets out a training requirement for civilian contractors who come into contact with foreign prisoners.

With regard to the policy, my amendment is very forthright. It states that the United States must treat all foreign prisoners humanely and in a manner that the United States would consider legal if perpetrated by the enemy against an American prisoner. That is a restatement of many decades of U.S. policy and the Army's own regulations.

My amendment also reaffirms the obligation of the United States to abide by the legal prohibitions against torture. That is the law of the land.

The memos authored by the Justice Department apparently reveal another view: that torture can be ordered by the President despite clear laws in the United States against it. Even President Bush now says he disagrees with that view.

We should reaffirm that torture is not allowed under any circumstances.

The amendment also codifies the longstanding Army regulation governing the treatment of foreign prisoners. That regulation states that where there is doubt about the legal status of a foreign prisoner, then the prisoner is entitled to the protection of the Geneva Convention, at least until a status can be appropriately determined by a “competent tribunal.” The procedures for the tribunal are specified in regulation.

Unfortunately, our government has ignored this regulation during the course of the war on terrorism and the war in Afghanistan. No such screenings have been conducted in Afghanistan. The administration simply designates someone as a terrorist and that is enough to land them in prison indefinitely.

We have not had one trial by military commission yet. And certainly we determined that some of these people we called terrorists, who could be held indefinitely, were not terrorists, because we let some people go. I suspect some more people will be let go.

We are in this bind because the administration failed to follow the Army's own guidance. The military lawyers knew there would be situations when the legal status of a foreign person captured by our troops was not clear, so they devised a very careful, very basic screening process. By conducting these status hearings, we would then know what rights and what legal protections the individual is entitled to. That is the military policy. It is certainly the policy our U.S. military wants other countries to follow, and the one we said we will follow.

My amendment further states that it is in the interest of the United States to expeditiously prosecute the cases of those held at Guantanamo Bay. We have given the administration wide latitude in how it operates in Guantanamo. Congress understands we are fighting a new kind of war, one where civilians are at great risk, where intelligence is critical, and where the country has to be tough against its enemy.

Having said that, after all the months and years we held prisoners in Guantanamo, not a single case has been prosecuted. Not five, not four, not three, not two, not one. Not a single prosecution. One would think that with the thousands of lawyers in our military and our Justice Department, we could act with some greater dispatch. One would think that of all the people locked up indefinitely, we could have found one, just one, in all those prisoners that we could have prosecuted. But that is not the case.

For the bad actors, the murders, the terrorists at Guantanamo, we need to bring charges against them so that the victims of their crimes can have justice and so that those accused, if found guilty, can finally have their fate determined. These indefinite detentions, where nobody is prosecuted, where no actions are taken, are contrary to our legal system and contrary to the security interests of the United States.

In the reporting section of my amendment, I ask for four basic pieces of information: One, a quarterly report providing the number of prisoners who were denied prisoner of war status and the basis for denying that status; two, the proposed plan for holding military commissions at Guantanamo Bay; third, previous Red Cross reports provided to the military regarding the treatment of prisoners—the ICRC reports can be submitted in classified form as the ICRC has requested; and four, a report setting forth prisoner interrogation techniques that have been approved by the administration.

Much of this information has dribbled out in press reports and through leaks. Why don't we set the record straight and let the American people have access to this information?

The administration ought to have a more orderly process in place for disclosing this information. It will require some structured reporting that is long overdue.

Finally, we know that many prison abuses were carried out by civilian contractors. We do not know who these people are, where they came from, or what they were trained to do. At a minimum, we should require these contractors, just as we require of our military personnel, to be trained in the laws of war and international humanitarian law. It is imperative they understand what the law requires when it comes to the treatment of foreign prisoners.

There is nothing complicated about this amendment. It simply sets out a more coherent framework with regard to how we treat foreign prisoners.

Now, let me turn to the portion of the amendment that I suspect will be subject to a tabling motion—the second-degree amendment.

There is a popular expression used when a group of people mean to work together to protect against possible harm or danger. It is called “circling the wagons,” and it comes from American pioneers, who used to form their wagons into a circle to better defend against an attack.

If a move is made to table this amendment, I would say that we are seeing a circling of the wagons by Republicans on behalf of the administration so that none of the information we seek can come out. I find that regrettable, but it is not surprising. It is an election year.

Americans are becoming increasingly concerned about the administration's handling of the war in Iraq: no weapons of mass destruction, the disingenuous link to the September 11 attacks, the leak of a CIA operative's name, the months of continued violence against Coalition soldiers after the President had proclaimed victory, and then the photographs out of Abu Ghraib. The American public is sick and tired of being lied to. They are sick of the secrecy. They want answers, but the wagons continue to circle.

This amendment requires the administration to cooperate with a thorough congressional investigation, by Republicans and Democrats alike, into the abuse of prisoners in U.S. custody. It requires the release of all documents relative to the scandal. All documents—not just a few selected by the administration when the pressure is on.

I would say this: Those who want to keep these documents hidden should know that at some point the day of reckoning is going to come. We are now at a crisis point. Is the Senate of the United States content to serve as an arm of the Executive Branch? Water flows downhill, and so does Government policy. Somewhere in the upper reaches of this administration a process was set in motion that seeped forward until it produced this scandal. To

put this scandal behind us, first we have to understand what happened. And we cannot get to the bottom of this until there is a clear picture of what happened at the top.

For many months, the Attorney General and other senior administration officials have refused to answer letter requests for documents relating to the interrogations of detainees abroad.

Earlier this month, the Attorney General appeared before the Judiciary Committee for the very first time since the war in Iraq began, but he refused to answer direct questions posed by Senators and refused to give us the documents we requested regarding the treatment and interrogation of prisoners. And not only that, he offered no legal challenge for his refusal, and practically challenged the Judiciary Committee to subpoena him.

When the Judiciary Committee met last week, I proposed a subpoena. Our Republican colleagues said it was too broad. We narrowed it down to 23 specific documents. When the chairman said it was premature, Senator FEINSTEIN proposed that we amend the subpoena to give the Attorney General more time to produce the documents voluntarily. Even then, it was voted down.

Yesterday, in a small gesture in response to public pressure, the White House released a tiny subset of the materials we sought. All of these should have been produced earlier. Much more remains hidden. Of the 23 we requested, we got 3, and of those 3, 2 had already been posted on the Internet. So, in effect, the administration gave us one voluntarily. Though this is a self-serving selection of documents, it is a beginning. I give the administration credit for that. But for the Judiciary Committee and the Senate to find the whole truth, we will need much more cooperation.

The documents released yesterday raised more questions than they answered. The White House released a January 2002 memo signed by President Bush calling for the humane treatment of detainees. But did the President sign any orders or directives after January 2002? Did he sign any with regard to prisoners in Iraq? Why won't the President's counsel comment on what the President said or ordered?

Why did Secretary Rumsfeld issue and later rescind tough interrogation techniques? How did these interrogation techniques come to be used in Iraq, where the administration maintains that it has followed the Geneva Conventions?

Where is the remaining 95 percent of the material requested by members of the Senate Judiciary Committee? Why is the White House withholding relevant documents that were produced after April 2003?

When are we going to stop sitting on our hands, becoming a rubberstamp for an administration cloaked in secrecy?

We have the legal right, the constitutional obligation, and the moral au-

thority to ask questions and demand answers today. We have to keep the pressure on until we get honesty and answers. I hope we will stand up and say that we are an independent body in the Senate and that we are willing to ask questions.

More and more, the American people can see that when you ask for 23 documents, and you only get 3, 2 of which have already been released by the press, that is not cooperation. It is not openness or cooperation when there is an arbitrary cutoff of documents after April 2003. It is not cooperation when we cannot find out why there is a difference between the advice that comes from Attorney General Ashcroft's office and what the President says he is going to do. And it is certainly not cooperation when we cannot get to the root of this terrible disconnect between stated policy and the photographs of the torture at Abu Ghraib.

I must say, I am suspicious because I asked about prisoner abuse months before the pictures came out. I have asked about Afghanistan. I was told that the U.S. was complying with the Torture Convention. But we now find that some prisoners died at the hands of some of the jailers.

I have asked the same questions about Guantanamo, including questions like why do we have hundreds and hundreds and hundreds of detainees, but we cannot find a single one—not even one—we feel confident enough to bring charges against before a military commission? It should be one of the easiest places in the world, if there is any evidence, to get a conviction. Not one trial out of those hundreds and hundreds and hundreds of prisoners?

Do we wonder why the rest of the world asks whether America has lost its moral compass? As an American, I do not think we have. I believe very strongly in the morality of our country. But I worry very much about what some of our leaders are holding back. I wish we would get all these matters out. I believe we would be better off if we did. We would look better in the eyes of the rest of the world. The United States is not a country that can and should condone torture. We are a country that expects to play by the highest rules because we ask others to, even when our enemies do not. Even during the two world wars, we treated our prisoners humanely.

This is a question we should ask: Why this sudden change in our policies?

I will close by reminding my colleagues that I think it was about a year ago the Secretary of Defense said: We will know if we are winning the war on terrorism if we are capturing or killing or stopping more terrorists than the madrasas are recruiting and churning out.

After Abu Ghraib, I asked the Secretary of Defense: By that definition, are we winning or not? He said he did not know. Obviously, we are not winning. There are recruiting posters all

over the Middle East, and even into Turkey, with photographs from Abu Ghraib.

If the administration will not come forward on its own, if the administration will not tell us what is happening, we—at least the men and women in the Senate—should have the courage to demand answers.

In the weeks since a courageous soldier-whistleblower and a probing journalist revealed to the world the abuses at Abu Ghraib prison, evidence has continued to seep out almost daily of similar mistreatment of prisoners in other U.S. military detention centers in Iraq, Afghanistan, and Guantanamo. White House officials and the political appointees in the Department of Defense have tried to deflect their own responsibility by singling out a few “bad apples” for punishment.

But bit by bit, the press is uncovering new information, and it all points toward those higher up in the chain of command.

On May 15 of this year, President Bush said, “The cruelty of a few has brought discredit to their uniform and embarrassment to our country.” That statement, it now turns out, was only partly true. Since then, we have learned a great deal about what was discussed and debated at the highest levels of our government.

While the President insists that he wants to get to the bottom of this, high-level White House and Pentagon officials refuse to answer questions or to disclose the relevant documents requested by the Congress.

They deny any pattern of illegality in the interrogation and treatment of prisoners, while it becomes clearer by the day that this scandal was set in motion by the actions of senior officials.

We learned that in October 2003, General Sanchez ordered the “harmonization” of military policing and intelligence in Iraq, placing military intelligence in control of key cellblocks at Abu Ghraib prison.

We learned from the Washington Post that, over the past 18 months, the Army has opened investigations into at least 91 cases of possible misconduct by soldiers against detainees in Iraq and Afghanistan. And the President talks about a few bad apples. The President’s comments have become harder and harder to swallow.

We learned on June 7 from the Wall Street Journal about a March 2003 Pentagon report contending that the President was not bound by laws prohibiting torture. This report went so far as to say that Government agents who tortured prisoners at the President’s direction cannot be prosecuted by the Justice Department.

The very next day, the Washington Post reported that in August 2002 the Justice Department advised the White House that torturing al-Qaida terrorists in captivity abroad “may be justified.” The memo argued that the President has absolute authority in the

“war against terrorism” and that international treaties against torture, which the United States ratified, “may be unconstitutional.” And, this report continued, Congress is completely powerless when the President acts as Commander in Chief.

That same day, the Attorney General made his first appearance before the Judiciary Committee in 15 months. He refused to give a copy of the Justice Department memo to members of the committee even though he was unable to say on what legal authority he based his refusal.

A week later, Republicans on the Judiciary Committee blocked a subpoena seeking these documents. Some called it a “fishing expedition,” even though we asked for a grand total of 23 documents.

The committee of jurisdiction had the opportunity and the responsibility to get us closer to the truth about why these abuses occurred, but the Republicans chose to circle the wagons instead of doing what is right for the country.

The stonewalling in the prison abuse scandal has been building to a crisis point. Yesterday, responding to public pressure, the White House has released a small subset of the documents that offers a glimpse into the genesis of this scandal. There are many items missing from this release, however, including all but three of the 23 items Judiciary Committee Democrats requested in the subpoena that was voted down by Republicans last week. Where are the 20 remaining documents? Perhaps the most ominous omission is the lack of any documents reflecting White House involvement in this issue since military action began in Iraq last year. The released documents do not include a single reference to the treatment or interrogation of detainees in Iraq, despite the heinous abuses at Abu Ghraib that we have all seen with our own eyes.

The White House released a Presidential memorandum dated February 7, 2002, directing that al-Qaida and Taliban detainees be treated humanely. But, did the President sign any directive regarding the treatment or interrogation of detainees after February 7, 2002? More specifically, did the President sign any directive after the United States invaded Iraq on March 19, 2003? These questions remain unanswered.

Last week we learned that Secretary Rumsfeld personally approved plans to hide some of the prisoners in Iraq so that they could not be visited by the International Committee of the Red Cross. They became nameless, faceless, and numberless. This is not only Kafkaesque, it was a direct violation of the Geneva Conventions. In a press conference last Thursday, Secretary Rumsfeld acknowledged his role in hiding these “ghost prisoners,” including one “high value” prisoner who was lost in custody for 7 months.

Yet in the same breath, Secretary Rumsfeld said, “I have not seen any-

thing that suggests that a senior civilian or military official of the United States of America . . . could be characterized as ordering or authorizing or permitting torture or acts that are inconsistent with our international treaty obligations or our laws or our values as a country.”

Secretary Rumsfeld should read the memos written by the Department of Justice and by his own legal staff at the Pentagon. The leaked and released documents reveal plenty to suggest that legal arguments were made and orders were signed in violation of our laws and treaty obligations. The few documents released by the White House yesterday serve to confirm earlier press reports and postings.

A year ago, after learning that the United States might be using techniques that pushed the limits of the Torture Convention, I wrote to the White House looking for assurances that the administration was complying with U.S. and international law. I received a letter that stated clearly and unequivocally that it was and would continue to do so.

In fact, we now know that the White House and the Pentagon were actively working to circumvent the law. Guidelines for interrogating prisoners were applied routinely in multiple locations in ways that were illegal. It is also clear that U.S. officials knew the law was being violated and for months, possibly years, did virtually nothing about it.

Instead, they detailed their lawyers to find legal loopholes and interpretations that would redefine torture and devise innocuous sounding labels for their interrogation techniques, such as “sensory deprivation” or “stress and duress.”

I wrote to the White House, the Pentagon and the CIA last June, a year ago, about the reported torture of Afghan prisoners by U.S. interrogators in December 2003. Two of those prisoners, both of young age, had died during interrogation. Others described being forced to stand naked in a cold room for days without interruption, with their arms raised and chained to the ceiling and their swollen ankles shackled. They said they were denied sleep and forced to wear hoods that cut off the supply of oxygen.

My letter, and subsequent letters, were either ignored or received responses which, in retrospect, bore no resemblance to the facts. Sixteen months later, the investigations of those deaths, ruled homicides, remain incomplete.

Just last week, in a case we had not known of previously, a CIA contractor was indicted for beating an Afghan detainee with a large flashlight. The Afghan, who had surrendered himself at the gates of a U.S. military base, died in custody on June 21, 2003, just days before I received a letter from the Bush administration saying that our Government was in full compliance with the Torture Convention.

Prisoners who are suspected of having killed or attempted to kill Americans do not deserve comforts. But the use of torture undermines our global efforts against terrorism and is beneath a great Nation.

It is illegal whether U.S. personnel engage in such conduct themselves or they hand over prisoners to the government agents of another country where torture is commonly used. That happened in 2002, when U.S. agents sent a Canadian citizen to Syria, letting others do the dirty work. Yet the White House will not provide us with the documents in which they concoct theories to justify turning over detainees to foreign nations that conduct torture.

There are many victims of this policy. First are the Iraqis, Afghans, and other detainees, some of them innocent of any crime, who were tortured or subjected to cruel and degrading treatment. The International Committee of the Red Cross reported that it was told by the U.S.-run Coalition Provisional Authority in Iraq that 70 to 90 percent of those in detention were innocent civilians who had been swept up in raids.

That was information that U.S. officials gave to the ICRC. It came from our own Government. It is no wonder that after the horrific images were broadcast around the world, the Pentagon started to clean out Abu Ghraib, releasing thousands of prisoners who apparently never should have been there.

We now know that many other Iraqis and Afghans died in U.S. custody, in conditions so abhorrent they conjure up images reminiscent of a Charles Dickens novel. Many of those deaths were never investigated.

The other victims of this policy are our own soldiers, who overwhelmingly perform their duties with honor and courage, and who now have been unfairly tarnished and endangered by these images and this scandal.

Our troops have also been tarnished by profiteering companies, none more brazen than Halliburton, which have reaped huge profits while our soldiers are risking their lives and losing their lives. Yet Republicans blocked Senate action to make war profiteering a crime and hold these people accountable.

Countless people around the world, especially in the Middle East, suspected that President Bush's decision to invade Iraq had a lot more to do with Iraqi oil than with any of the other reasons he gave that have since been proven false.

I do not share that view, but what better evidence to fuel those charges than Halliburton's noncompetitive contracts and waste. It is fraud and abuse on a scale that would shock the conscience of anyone except perhaps an Enron executive. Halliburton seems to regard the U.S. Treasury as its own personal bank account. With "cost plus" contracts, what do they care how much they overcharge the taxpayers? They are guaranteed their profits re-

gardless. It is the antithesis of patriotism.

And then there is America itself. Our Bill of Rights was the model for the Universal Declaration of Human Rights. Generations of Americans have tried to live up to its promise and to set an example for the world. The damage this administration has caused to our credibility and reputation as a nation of laws and of decency will take years to repair. Just as they have squandered so much of the world's respect and support for our country after September 11, so now have they squandered much of the human rights leadership that has taken so many years to painstakingly build. This is a travesty of monumental proportions.

The individuals who committed those acts are being punished, as they must be. But what of those who gave the orders or set the tone or looked the other way? What of the White House and Pentagon lawyers who tried to justify the use of torture in their legal arguments? These lawyers have twisted the law, advising the President that for an abuse to rise to the level of torture it must go on for months or even years, and be so severe as to generate the type of pain that would result from organ failure or even death.

Think about that, and you begin to realize how destructive and outrageous this is.

And what of the President? Last March, referring to the capture of U.S. soldiers by Iraqi forces, President Bush said, "We expect them to be treated humanely, just like we'll treat any prisoner of theirs that we capture humanely. If not, the people who mistreat the prisoners will be treated as war criminals."

At the same time, the President's own lawyer, ignoring the Torture Convention altogether, called the Geneva Conventions "quaint" and "obsolete." Today, soldiers who have spoken out about the crimes they witnessed and the involvement of their superiors have been threatened and punished by the Defense Department they have honorably served.

One need only review history to understand why the law makes no exception for torture. The torture of criminal suspects flagrantly violates the presumption of innocence on which our criminal jurisprudence is based, and confessions extracted through torture are notoriously unreliable.

Once exceptions are made for torture it is impossible to draw the line, and more troubling is who would be in charge of drawing it. If torture is justified in Afghanistan, why is it not justified in China, or Syria, or Argentina, or Miami?

If torture is justified to obtain information from a suspected terrorist, why not from his wife or children, or from his friends or acquaintances who might know of his activities or his whereabouts? This has happened in many countries, and decades later those societies are still trying to recover.

The United States cannot become the model of justice our forefathers envisioned if we continue to tolerate the twisted logic that has been given currency with increasing regularity in U.S. military prisons and in the White House since 9/11. Some argue it is a new world since those terrible attacks on our country 3 years ago. And to some degree, they are right, which is why we have reacted with tougher laws and better tools to fight this war. But do we really want to usher in a new world that justifies inhumane, immoral and cruel treatment as any means to an end?

As a nation of laws, and as the world's oldest democracy and champion of human rights, we must categorically reject the dangerous notion that is now in our midst, seeking our assent, or our silence, that torture can be legally justified and normalized.

President Bush has said he wants the whole truth, but he and his administration have been stonewalling from the top. The President must order all relevant agencies to release the memos from which these policies were devised.

He must clearly and unequivocally order all of his subordinates and every member of our armed services to adhere to our international treaty obligations including the Geneva Conventions, the Torture Convention, and all applicable U.S. laws. And finally, there needs to be a thorough, independent investigation of the actions of those involved, from the people who committed abuses, to the officials who set these policies in motion.

Only when these actions are taken will we begin to heal the damage that has been done.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Texas.

#### INVESTIGATION INTO TREATMENT OF IRAQI PRISONERS

Mr. CORNYN. Madam President, I want to take a few minutes to respond to some of the comments made by the Senator from Vermont because I do think the characterization he gave to some of what has gone on is at least incomplete. I disagree with some of his conclusions, and I want to point out why because I believe the Members of this body deserve to have a complete picture and at least have the benefit of considering alternative conclusions from those drawn by the Senator from Vermont.

I have the high honor of serving on both the Senate Armed Services Committee and the Judiciary Committee. Certainly, the Senator from Vermont is the ranking member of the Judiciary Committee, but I would remind this body that the Senate Armed Services Committee, under the leadership of our chairman, has been investigating the Abu Ghraib prison situation and the interrogation practices and policies of the U.S. Government since at least May 11. We have had a series of hearings there which have been very helpful



in understanding both the nature of the problem and the nature of the investigation that is ongoing, ultimately, hopefully, leading up to a conclusion as to who did what, whether there were, indeed, as there appears to be, some violations of American policy with regard to the interrogation of detainees, and, of course, to hold the guilty accountable.

That is what we are: We are a nation of laws. We believe in the rule of law. We believe the law applies equally to everyone, no matter how high up in the chain of command you are or how low you are in the chain of command. And I believe we will be true to our ideals in that regard. But I would say that much of what the Senator from Vermont has suggested needs to be produced is sort of in a vacuum of sorts, without the benefit of a lot of what the Senate Armed Services Committee has already done, to find out what happened, what the policies were, what the circumstances were, whether this represents an aberration or whether it represents something worse.

To date I would say it is pretty clear that what we saw, as a result of a handful of actions on behalf of American soldiers, was an aberration. And thank goodness. There is no question, though, that these soldiers lacked the proper training and, indeed, the proper leadership. Those are chain of command problems and ought to be taken as high as they go as a result of the investigation.

But as the Presiding Officer knows, there are at least six different investigations into the circumstances at the Abu Ghraib prison. We need to let that process run its course to find out what the facts and circumstances are. As I recall, we are awaiting the report of General Fay and perhaps others. We ought to get to the facts and not succumb to the temptation during an election year to overly politicize what is going on.

While we have always respected the rights and the civil liberties of every American, we also need to be concerned about the rights and the health and the welfare of our young men and women who are serving our Nation so nobly in the battlefield. That requires the ability to get good, actionable intelligence.

The present occupant of the Chair was there at the Senate Armed Services Committee hearing. General Jeffrey Miller testified on May 19. I asked him at that hearing:

In your opinion, General Miller, is the military intelligence that you've been able to gain from those who have recruited, financed, and carried out terrorist activities against the United States or our military, has that intelligence you gained saved American lives?

General Miller said:

Senator, absolutely.

Then I asked General Abizaid, the CENTCOM commander:

And would you confirm for us, General Abizaid, that that's also true within the Central Command?

And General Abizaid—who I think all of us, as we have come to know more about him, have come to admire him and his leadership capacity—said forthrightly:

Senator, I agree, that's true. I would also like to add that some of these people that we are dealing with are some of the most despicable characters you could ever imagine. They spend every waking moment trying to figure out how to deliver a weapon of mass destruction into the middle of our country. And we should not kid ourselves about what they are capable of doing to us. And we have to deal with them.

It is very important to keep in proper context what is going on and the fact that we are at war, a war not of our choosing—of course, we were attacked—but a war that we must and we will finish.

I want to point out another thing that is important to the overall context of what the Leahy amendment seeks to get. That is, we have two cases currently pending at the U.S. Supreme Court in the Hamdi and the Padilla cases, where the U.S. Supreme Court will tell all of us in America what the law requires with regard to the treatment of unlawful combatants, including one who happens to be an American citizen, Jose Padilla, but who joined arms with the enemy, with the terrorists who seek to attack and to kill Americans on our own soil. And that advice, that direction is forthcoming. It could literally come down, of course, any day now, since the Supreme Court's term is about to expire.

The characterization my colleague from Vermont gave to these memoranda is not accurate. As a matter of fact, as the Senator may recall—and maybe he said this; I didn't hear it—the Senate Judiciary Committee voted against issuing a subpoena but then authorized the chairman and perhaps the ranking member to engage in discussions with both Alberto Gonzales, White House counsel, and Attorney General Ashcroft to determine what legal memoranda they might be willing to voluntarily provide the committee. So we voted against issuance of the subpoena.

But whether it is the Bybee memo that has been discussed and covered by so much of the press, that is 50 pages long, or whether it is any of the other memos the Department of Defense and Department of Justice released yesterday, they reveal not a coverup but a careful, deliberate, and scholarly approach to determining what, in fact, the law requires.

If, in fact, as the folks who are suggesting there is some sort of coverup or some sort of policy of abuse—either one of direction or in terms of creating an atmosphere where it should happen—these memos that have been released completely refute that idea of lawlessness that they are seeking to spin.

I am deeply disturbed by the increasingly politicized nature of the debate on the war on terror. We are at war against a people who will stop at nothing

to kill innocent Americans. We paid the price for not aggressively pursuing those terrorists and this information in the past, at least since 1993, with the bombing of the World Trade Center. But after 9/11, our Nation found itself at war with a new kind of enemy from whom we need information, actionable intelligence, that can mean the difference between life and death for our troops and our citizens.

As I said a moment ago, there have been many baseless allegations that the Department of Defense has used torture during interrogations as a matter of policy. But what happened at Abu Ghraib was not an administration policy, not DOD policy, not CENTCOM policy, or any other official policy. It was completely beyond the pale of acceptable behavior, and those responsible will be held to account and will be punished.

As recently as yesterday, President Bush made the following comments:

We do not condone torture. I have never ordered torture. I will never order torture. The values of this country are such that torture is not a part of our soul and our being.

Yet despite these unequivocal comments from the Commander in Chief, political opponents of this administration continue to allege, without foundation, that our Nation's leaders somehow support the use of torture. It is important to remind some of our colleagues that, again, the purpose of these interrogations is to gather intelligence consistent with our values, which means no torture and humane treatment of all detainees. The interrogations we have conducted in Iraq and at Guantanamo Bay have saved American lives. I believe it is critical that we continue to aggressively, within the limits of the law and humane treatment, seek actionable intelligence and continue to save American lives.

Unfortunately, it seems there is an irresistible impulse to score cheap political points by criticizing the careful, deliberative process the administration undertook to ensure that those very important interrogations were conducted within the law. The techniques of our Armed Forces, including those used in Iraq or at Guantanamo Bay, can hardly be described as torture.

I, like a number of other Members, have traveled to Guantanamo Bay to observe for myself, because I was concerned. I was interested. I wanted to learn how we are handling these people who have recruited, trained, and financed terrorist activity against the United States and, if given the opportunity to do so, would do so again.

For some reason, there are certain Members, and indeed certain elements of the press, who are trying to convince the American public that making a suspected terrorist stand for 4 hours, or giving them only 4 hours of sleep constitutes torture. They want them to believe that poking someone in the chest with a finger or changing their sleep patterns or meal selection is cruel or inhumane.

Let me read quickly some of the approved methods of interrogation which some of the critics claim is torture: Asking straightforward questions; incentive/removal of incentive; emotional love, which is playing on the love a detainee has for an individual or group; playing on the hatred an individual has for a individual or group; something called fear up harsh; fear up mild; reduced fear; pride up and ego up; pride and ego down; futility, which is invoking the feeling of futility of a detainee; the we-know-all technique, convincing the detainee that the interrogator knows the answers to the questions he is asking the detainee; establish your identity, or convincing the detainee the interrogator has mistaken the detainee for someone else; repetition approach; file and dossier, or convincing the detainee the interrogator has a damning and inaccurate file, which must be fixed; rapid fire questions; silence; change of scenery down; dietary manipulation.

For example, it says in this approved memorandum, a change from hot rations to MREs. That is hardly something that could be said to constitute torture.

Next is environmental manipulation, or adjusting the environment to create moderate discomfort; sleep adjustment; false flag; and isolation.

These are not torture under anybody's definition. These are legal and humane methods of extracting information from terrorists.

It is an affront to our men and women in uniform to accuse them of torturing terrorists when the reality is our policy calls for all detainees to be treated humanely. The time has come to ask at what point does this largely partisan and media-driven witch hunt so damage and detract from the mission of our troops in the field that it irreparably harms U.S. interests, including our ability to collect life-saving intelligence?

Because of the onslaught by some on Capitol Hill—a fact not lost upon our enemy—agencies have been forced to disclose procedures al-Qaida and other terrorists now train and use to defend against, which is creating a roadmap.

Plain and simple, interrogations save lives. The interrogations we have conducted over the past 2½ years have saved lives of soldiers in the field and innocent civilians at home. It is high time we get our priorities straight.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Madam President, I am happy to respond to my colleague from Texas about an issue which is in this morning's paper and on the minds of many Americans and people around the world. In today's Washington Post, there are two major front-page stories related in an unusual way. Here is the photo of the parents of the South Korean who was beheaded in Iraq—another heinous, barbaric crime committed by terrorist extremists. Next to

it, we have an article entitled "Memo on Interrogation Tactics Is Disavowed."

In this article about the interrogation tactics we learn President Bush's White House is now disavowing an opinion from the Department of Justice issued in August of 2002 relative to interrogation tactics that could be used by the U.S. Armed Forces. It appears now that this memo has become public, the White House has found it necessary to publicly disavow this statement by the Department of Justice and Attorney General Ashcroft. Why?

Well, I think it is obvious.

For a lengthy period of time the Bush administration and the Department of Justice of Attorney General Ashcroft have been involved in a fierce, protracted debate about acceptable interrogation techniques and the definition of torture, a debate which relates to issues resolved over a hundred years ago, in many cases, by the Government of the United States of America when we made it our express policy to disavow torture. When we later entered into a Geneva convention after the Nazi war crimes, when we later had a convention on torture, brought to Congress by President Ronald Reagan, this series of treaties enacted by the United States making them the law of the land said we as a Nation stood with civilized nations around the world in condemning and prohibiting torture, cruel and inhumane and degrading treatment of prisoners. Our statements were unequivocal. We stated that for the world.

Why? Frankly, because we believed the United States of America and the values we represent on the floor of the Senate are different than some. There may be some in this country who will argue we should answer the beheading of innocent people, like this South Korean, with similar violence. Thank God, their voices are few and ignored by most. We have said from the beginning we will not stoop to this level.

If there is anybody who believes that is acceptable conduct, it is not the United States of America. That is a statement of values and principles, made first by President Abraham Lincoln during the bloody Civil War, and by Presidents of both political parties for decades thereafter. We know, however, that this administration, once engaged in the war on terror, decided to engage in a new debate on the definition of torture.

Two weeks ago, the Attorney General of the United States came to the Senate Judiciary Committee and said to us unequivocally twice that it was not his job, nor the job of this administration, to define torture. He said that on the record. It was broadcast across America and around the world. The very moment he said that, major news organizations were releasing a memo from Attorney General Ashcroft's Department of Justice, which defied his statement to the Senate Judiciary Com-

mittee, this memo of August 1, 2002, by Assistant Attorney General Bybee, a memorandum sent to Alberto Gonzales, counsel to President George W. Bush. According to Attorney General Ashcroft, this memo should not exist. He told us in open session it was not his job or the job of this administration to define torture. He said Congress has done that, and the laws do that.

Look at this memo of August 1, 2002. Turn to this infamous page 13 and read what Attorney General Ashcroft's Department of Justice said about torture:

The victim must experience intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure, or permanent damage resulting in a loss of significant body function will likely result.

You will not find these words in any treaty the United States has entered into, certainly not in our Constitution, nor in the laws of the land. You will find this in the memo from Attorney General Ashcroft's Justice Department. It is their definition of torture, sent to the President of the United States General Counsel, Mr. Gonzales.

For the Attorney General to tell us he is not in the business of defining torture, frankly, doesn't square with the reality of this official memo from his own Department. If that were the only thing in this memo, it would be bad enough. But there is more. Because in this memo, you will find a rationalization to suggest that the President, as Commander in Chief, is not bound by the laws of the land. That is a statement to which most people will say, I am sure they didn't say that. Let me read to you from a section about Section 2340A, the statute that makes torture a crime:

Any effort to apply Section 2340A in a manner that interferes with the President's direction of such core war matters as the detention and interrogation of enemy combatants thus would be unconstitutional.

Sadly, it went further. I read from the same memo:

Section 2340A must be construed as not applying to interrogations undertaken pursuant to his Commander in Chief authority.

In other words, this memo from the Ashcroft Department of Justice to Mr. Gonzales and the White House went beyond the definition of torture. It created an escape hatch for this President to say, as Commander in Chief: I am not bound by the laws of the land when it comes to torture and the interrogation of witnesses.

There are some who come to the floor and wonder why we are raising this issue.

What is the importance of this issue? The importance of this issue will be obvious to anyone who reads this memorandum now available on the Internet. This administration engaged in a fierce and protracted debate about whether they could redefine torture for the war on terrorism and whether this President, as Commander in Chief, was above the law.

For those of us in this Chamber who have sworn to uphold the Constitution of the United States, a solemn oath which each of us, including the President, must take, this is, indeed, an extremely serious situation: That this administration would think this President and those acting under his authority as Commander in Chief would not be bound by treaties, by the Constitution, or by the laws of the land.

Can any inquiry be more serious when the question, which must be asked by this Chamber of the Chief Executive of the United States, is whether he has gone too far, violating the law of the land?

So what will come before us in a short time is an effort to say to Attorney General Ashcroft: It is not enough that we have to rely on leaked memos released on the Internet. We demand of you the disclosure of relevant documents which will give us a better picture and a better understanding of this debate within the Bush administration about torture because, in the context of where we are today, this is not an academic issue. Because of Abu Ghraib and the shameless conduct of the men and women in that prison, which has been captured in photographs released around the world, the United States is being tested. We are being asked not only within our own borders, but around the world, whether in the war on terrorism, we have abandoned a commitment of over a century that says we will not engage in torture, that we are committed to the humane treatment of prisoners.

It is, unfortunately, a timely and legitimate question which we cannot duck; we cannot avoid. In order to answer that question, we understand we have to be open and transparent. We have to not only say to the world that we are the same country we were before 9/11. After Abu Ghraib, we have to show them proof, and the proof will be in the documents which the Attorney General has refused to disclose.

The Attorney General and the President have several legal options when Congress legitimately asks for documents. The President can assert his executive privilege. That was done by President Nixon during the Watergate scandal. It was contested in court all the way to the Supreme Court, but it is something a President can assert. Only the Court can ultimately resolve the dispute then between Congress and the President. President Bush has not asserted executive privilege when it comes to these memos of Attorney General Ashcroft. Or the Attorney General can say: There is a statutory privilege that allows me to withhold these documents.

The request for information that we are going to put in amendment form allows classified material to be treated separately so it would not in any way endanger the troops who are defending this country and defending themselves in Iraq and Afghanistan.

When asked point-blank by myself and others in the Senate Judiciary

Committee, Attorney General Ashcroft said: I cannot give you a legal authority for the reason I am not going to release these documents. He said: I just personally believe it is not the right thing to do.

I reminded the Attorney General—and it is worth repeating now—as important as his personal beliefs may be, they are not the law. If this Department of Justice and this Attorney General and this President cannot produce a legal reason for failing to disclose these documents, then they are asking to be above the law. No President, no Attorney General, no Senator, none of us serving this country or in this Congress are above the law and certainly not on an issue of this magnitude.

Some critics have come to the floor and said this request by Members of the Senate of the Attorney General to produce these important documents is the product of “an irresistible impulse to score cheap political points.” I quote a colleague of mine who said those words just moments ago, “cheap political points.”

I remind my colleagues and all others, this White House, just yesterday, decided this memorandum from Attorney General Ashcroft is so bad, so wrong that they are now disavowing the very memo which was sent to the chief counsel at the White House almost 2 years ago.

This is not about some political exercise. This is about truth and transparency and a disclosure which is needed to restore the confidence in the core values of America not only for the American people but for people around the world.

Yesterday, in a transparent effort to stop the pressure for full disclosure, the administration provided Congress with a two-inch stack of documents. But a cursory review of these documents reveals that the administration is withholding a lot of crucial information.

If anything, the documents that were released yesterday make it even more clear that we need complete disclosure from the administration. As the Chicago Tribune reported today:

The memos left unanswered at least as many questions as they answered. White House officials acknowledged that the documents provided only a partial record of the administration's actions concerning treatment of prisoners.

What do the documents that were released show? We now know that the Justice Department memo sent to Mr. Gonzales was the basis for the Defense Department's decision to approve the use of coercive interrogation techniques at Guantanamo Bay.

The Department of Defense and the Department of Justice were asking questions which are almost impossible for me to articulate on the floor of the Senate, but I must. They asked: How far can our interrogators go before they may be charged with a war crime? How far can they go before they might face a war crime tribunal?

That is the serious nature of this internal debate within the Department of Defense and the Department of Justice. That debate went on before Abu Ghraib. That debate went on before those horrendous photographs became part of the history of our occupation of Iraq.

Is it any wonder that Members of the Senate are coming to the floor today and saying we have an obligation to require this administration to completely disclose all of the documents and be open and honest about the dialogue which went on between the White House and the agencies of our Government?

To do less, sadly, is to create a question, an unanswered question, about whether the United States has changed.

Let me tell you for a moment some of the issues at hand. One of my colleagues came to the floor and dismissed some of the criticism of interrogation tactics as he said, frankly, tying the hands of interrogators who are only trying to protect us. We have learned something about interrogation tactics. We have learned that if you use torture—physical and mental torture—the person being interrogated will say almost anything, truthful or not, to make it stop.

The PRESIDING OFFICER. The Senator's 15 minutes in morning business has expired.

Mr. DURBIN. I ask for 3 additional minutes.

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

Mr. DURBIN. We know torture and the types of treatment, techniques, and interrogation tactics which have been prohibited by law in this country for many years are counterproductive. The Attorney General said as much before us. Torture does not work. People will lie for the pain to stop, and that is one of the reasons we do not engage in torture.

Secondly, my colleague, Senator BIDEN of Delaware, made a point and made it clearly. He said, in his words: The reason the United States does not engage in torture is to protect Senator BIDEN's son, who is a member of the military, and other members of the military from being subjected to torture.

We establish standards of humane and civilized conduct not only for ourselves but to demand them of the rest of the world. Will there be terrorists who ignore them? Of course. But who will argue with 140,000 American lives on the line in Iraq that we should somehow stoop to inhumane and barbaric conduct in this war against terrorism, subjecting all of our soldiers and many other innocent Americans to the same possibility? We have rejected that, and we should continue to reject that.

I close by saying this is a very serious issue for our Nation. The world is indeed watching us. They are asking us whether the United States will stand

behind its treaties in the age of terrorism. The Senate has an obligation to the Constitution and to the American people to answer these questions. Those who vote to table this amendment want to keep this conversation muted and these memoranda hidden from the American people. That is wrong. That is wrong for this government or any government. The American people have the right to know in what their government is involved. Transparency is critically important.

I urge my colleagues, and I hope a few of my Republican colleagues will join those of us on this side of the aisle, to stand up for the rule of law, a rule of law which has guided Presidents from Abraham Lincoln's time in the Civil War through President Reagan, through every President. There is no reason this President should be treated differently.

When it is offered, I urge my colleagues to support the Leahy amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I ask unanimous consent that I be permitted to speak for up to 10 minutes, the Senator from New York be permitted to speak for 10 minutes, and then the distinguished Senator from Alabama.

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

The Senator from Utah.

Mr. HATCH. I have been listening to my dear colleague from Illinois, and I have to say what happened at Abu Ghraib was absolutely wrong. Everybody knows that. What happened there has to be decied. We all have to speak out about it. But the minute they found out about it, they started the process of prosecuting the people who did this. It appeared to be a small cadre of people, all of whom will likely receive either severe reprimands or actual prosecution. In other words, the system is working.

It should never have happened. We decry it. It was wrong. All the screaming in the world by either side on this floor is not going to make any difference. It happened, and we are all ashamed of it.

Having said that, if we listen to the arguments of the other side, transparency is absolutely critical in all the things we do. Well, then that means we ought to do away with the Intelligence Committee because there are a lot of things that are not transparent to the American people, especially when it involves national security, especially when it involves our young people's lives while overseas, especially when it involves all kinds of matters that are better left non-transparent.

I went on the Internet and I read every one of these documents that was on the Internet. Most all of them were legal opinions. Now, one might differ with legal opinions. I do not know any two lawyers who agree on everything anyway, but if one reads those opinions they do make sense. For somebody to

say *carte blanche* that the Geneva Conventions apply and should apply to everything, that flies in the face of not only international law, it flies in the face of what is happening in this situation.

This is not a normal situation. We are not fighting autonomous countries right now. We are not fighting against organized enemies who wear uniforms and fight conventional battles. We are not fighting the normal course of battles that we have had through the years where we have had to, as gentlemen, recognize the civil way of doing things. We are fighting absolute terrorists who would destroy this country and destroy every person involved in our overseas operations if they had a chance, and they would do it by any means possible: biological, chemical, weapons of mass destruction, nuclear, if necessary, if they had the capacity to do it.

If we are so transparent that we tell them everything that is on our minds, then we are putting our young people at risk.

Yes, my colleagues can find fault with the legal opinions. People do. I might even agree or disagree on some of these legal opinions. But they were well-reasoned opinions. I know some of the people who actually rendered them. They are top notch authorities in these areas. My colleagues might disagree with them, but they cannot necessarily refute them.

I was in Guantanamo a few weeks ago. I went completely through that camp. I was shown everything I wanted to see, and that meant just about everything. I have read article after article about how terrible it is at Guantanamo, how much they violated the law, all because of conjecture. I have seen our colleagues on the other side, and I have seen the media excoriate this administration because of all of these bad things that have happened at Guantanamo.

Well, I went through Guantanamo, and it is a well-run camp with incentives. Now, some of our colleagues do not even like incentives. They will even criticize that because it is the Bush administration, after all. Of course, I know our colleagues are not making this kind of criticism because they want to find fault with the Bush administration or cast blame on the Bush administration or make the Bush administration look as if maybe it is not doing everything it should. I know that could not possibly be in their minds. Or that they are politicizing this because of the election that is going on. I know they would not do a thing like that. I just know it. I just know it deep within my soul.

My colleagues can differ with the legal opinions and they can certainly condemn what happened at Abu Ghraib. But these things are not happening at Guantanamo Bay. They did happen in Afghanistan, but in those cases there are investigations and prosecutions on their way. I do not think

we have to be transparent about everything around here. Transparency hurts our young men and women, too. It subjects them to all kinds of ridiculous problems.

It is important for us to get to the bottom of these things. I think it is important for us to have an overview, but I also think it is important for us to be fair and not just try to score, yes, cheap political points. Unfortunately, there is too much of that around here. It has happened on both sides from time to time, but it has really been happening this year. Every time it happens, I suggest we ought to stop and think about our young men and women overseas, whether we are helping them or hurting them. Some of these arguments are hurting them.

When I went to Guantanamo, I watched two interrogations, one with a terrorist who was very uncooperative and another one who at first was very uncooperative but because of work by some very effective people, using very effective interrogation techniques—not torture, by the way, not even close to torture—they have been able to obtain information that has saved our boys' and girls' lives.

Interrogations have to go on and they are not patty-cake games. There is no excuse for anything that even comes close to torture. And I believe that other than isolated incidents—which are going to happen in times of war, especially when we are fighting these type of terrorists—I suggest that our people have abided by the Geneva Conventions even though it is correct to say that in this type of a situation the Geneva Conventions may not apply.

Personally, I believe we ought to apply them to everything because there is a wide variety of interrogation techniques that are permissible under the Geneva Conventions. I won't go through all of those because I don't want to be transparent. Nor do I want some techniques that are acceptable to be criticized by any colleagues from any side to score cheap political points.

Frankly, I am getting a little tired of this desire to undermine everything that is going on over in Iraq and Afghanistan. I think it is time for us to get together and work in unison to try to help our young men and women. Transparency sometimes happens to be the worst thing we can do.

That doesn't mean we should not get to the bottom of these awful things that have happened at Abu Ghraib. That doesn't mean we should tolerate that type of irresponsible and criminal conduct. Of course we should not. There is nobody in this body who disagrees on that, to my knowledge; nobody. But to try to imply that the President of the United States is responsible for these aberrational activities by a few is, I think, irresponsible in and of itself and I think it is just too much of this political world that we are in right now.

Madam President, I went through the camp itself down at Guantanamo. It

was well run. There were people there who never were fed so well in their lives. There were arrows, so they could pray in the correct direction. There were Korans in every cell as far as I could see.

I saw many chessboards and checkerboards. I saw outdoor areas where they could exercise. I saw a lot of things that were being done right. I saw interrogations that were not staged for me, and I have to tell you it was run right. Anybody who thinks these are patty-cake games, that we must really hold and pet their hands, just isn't living in the real world.

I agree and I concede and I hope our colleagues—everybody on both sides agree there are certain things you can do within the parameters of the Geneva Conventions and there are certain things you can't do. But I guarantee if you went through everything that can be done in the Geneva Conventions there would be some people who would be very upset that those types of interrogation techniques could be used. I am not going to go through them all because I know the more stressful ones were not being used with the authority of our people. I think to imply that they were is wrong.

Before I close, let me just take a moment to comment briefly on statements made by my Democratic colleagues, attacking the President and the administration for not being forthcoming in releasing documents, notwithstanding the fact that they just declassified and released approximately 260 pages of legal memoranda.

They attack the Attorney General for refusing to hand over three documents when he testified before the Committee, but since then, we have received those documents from the White House.

Now, even though they lost on this issue before the Judiciary Committee, they are now trying to bring it up as an amendment on the floor.

In fact, they want us to vote on a subpoena before the time set to comply with the document request has passed. It is simply premature to issue any subpoena at this time.

I urge my colleagues to vote against this amendment if the Senator from Nevada decides to reintroduce it.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from New York is recognized for 10 minutes.

Mr. SCHUMER. Madam President, I thank my colleagues for this debate. The bottom line here to me is simple. That is, I must disagree with my good friend from Utah. I think transparency is to be preferred. Maybe it should not be in all instances but that ought to be the presumption and there ought to be strong argument before any transparency is not done.

Why is transparency important? I will tell you why: Because it makes better law. It makes better rules. The whole foundation of our Government has been based on openness—open de-

bate, open discussion. When that happens, we end up with better laws. Time and time again throughout the over 200-year history of this Republic, when things are done in secret, it leads to trouble.

This is a very delicate issue. There is no question about it. Obviously, we are in a new world, in a new situation. I don't think absolutes always govern in these kinds of situations. That is for sure. I am not sure exactly where the line is to be drawn. I don't think anyone is. But I am certain of one thing and that is you will draw the line a lot better when there is open debate and open discussion. After all, we are talking about the place where liberty and security clash.

The beauty of our system of government is that it is able to handle clashing values such as this in an extremely successful way, and has been almost certainly or almost universally for all the years of the Republic. Particularly the Founding Fathers, who debated these issues over and over again, wanted transparency when they were debating. That is why there is separation of powers. That is one of the reasons the whole system was set up with a legislative body and an executive branch. If, indeed, the Founding Fathers thought this all should be done in the executive branch behind closed doors, we would have had a totally different system.

Yet what we have found in this Justice Department all too often, in this administration all too often, when the vital issues of liberty versus security should be decided, there is an aversion to debate. There is a preference for doing this in secret, in the dark, behind closed doors. On issue after issue after issue, when that has been done, a bad result occurred.

My colleague from Utah seems quite certain what happened at Abu Ghraib and other places. He may be the only one in this Chamber who is. I don't know how far the chain of command went. I don't know which memos exist and don't exist and what they say and which were dispositive. I have real doubts that it was the noncommissioned officers at the bottom of the chain who were the only ones who had anything to do with this, but who knows? Who knows? We are not going to know anything until we get these memos.

If they have things that should be classified, let those be redacted. If there are certain things that would damage the security of our soldiers, of our country, let those be redacted.

But I doubt even my colleague from Utah, who stated that no one in this Chamber feels we should not have transparency and debate—I think we mistake two things. There are the difficulties and practicalities of living in this real world, this post-9/11 world, and I have spoken about that at the hearing and everywhere else. There is the leap in logic, the incorrect logic, that says because those issues are difficult they should be decided in the

dark, in secret. The two don't follow. In fact, I would argue the opposite follows. The more difficult the issue, the more dangerous it is to either liberty or security or to both, as in this case it may be, the more we need openness, the more we need discussion.

Again, if this were the first time that this Justice Department had decided to deal with terribly sensitive and difficult issues in secret I don't think there would be such a brouhaha in this Chamber or in the country. But it is a pattern that happens over and over and over again. Our Attorney General has come to testify before our Judiciary Committee twice since his ascension to that high office. When we ask questions, we routinely get no answer, or answers that do not deal with the questions. There is almost a mistrust of open debate, a mistrust of the legislative body, a mistrust that the American people ultimately in their wisdom will come to the right conclusion.

It is almost a sort of "We know best we can't trust you to know anything" type attitude. I am surprised to see so many of my colleagues defending that attitude.

Again, let's not mistake where we come down on the substance of this issue, where there will be variation—my colleague from Illinois and my colleague from Utah had different views—with the need for openness, the need for transparency, the need for debate, and the faith that certainly George Washington and Thomas Jefferson and James Madison and Alexander Hamilton had, that we should have as well, and that is that open debate will lead to the right conclusion. That is democracy. It is faith in the people and ultimately their ability to make the right decisions after open, fair debate, after both sides are presented.

That faith has been sadly lacking by the Attorney General and, I regret to say, in good part by this administration. So we come tonight, trying to force the issue. We believe we are living up to our constitutional responsibilities. We believe that if the Founding Fathers were looking down on this Chamber they would say: You are doing the right thing to get these documents and make them public, to have an open debate.

I hope and pray some of my colleagues on the other side of the aisle will see this.

When Attorney General Ashcroft came before our committee and didn't claim executive privilege and didn't claim what he was talking about was classified, but said he would refuse to answer the committee anyway, that is not what this Chamber is all about, or these hearings are all about, or this Government is all about. That is why when that has happened in the past, there have been discussions of contempt of Congress. We wish to avoid those kinds of confrontations. We want to come to an honest discussion.

Everyone will admit there were problems. My colleague from Utah said

that. Well, do you think those problems were *sui generis*? I would argue those problems could well have resulted because of a tendency for secrecy, or because of the aversion to open debate. For all we know, there were contradictory memos floating around the Department of Justice and floating around the Department of Defense. For all we know, majors, captains, and colonels who had to interpret these things on the ground were totally confused. We should find out all of this.

Again, to my colleagues, I hope we will agree to the Leahy amendment; I hope we will agree to the Reid amendment to the Leahy amendment; we will get to the bottom of this and come up with a policy in this difficult world and difficult position that is satisfactory, or at least the best solution where there may be no solution that satisfies everybody.

I yield the floor.

THE PRESIDING OFFICER (Mr. ALEXANDER). Under the previous order, the Senator from Alabama is recognized for 10 minutes.

Mr. SESSIONS. Thank you, Mr. President.

I would like to comment on some of the things that have been said.

First of all, I believe there are things our country has every right to maintain secrecy on. I think the administration has been open about producing memorandum to us in a way that I don't know they are required to do. I was a Federal attorney in the Department of Justice and a U.S. attorney for 12 years. I have some appreciation for the way the Government works. The President has a right to receive legal advice on all the options he may have from his Attorney General or staff attorneys. In fact, a lot of reference has been made here, and as far as I can tell, Attorney General Ashcroft's memoranda are memoranda written only by lower level attorneys, detailing the legal options available in a time of war.

Certainly we want to encourage attorneys to consider these ideas and these issues on what is appropriate in terms of interrogating prisoners who are bent upon the destruction of the United States of America and as many of its citizens in this country as they can possibly kill. That is fact, and we know it. The rules of law and of war are a joke to the terrorists that we have captured and others still bent on attacking Americans. They care nothing about it. They make television movies of beheading people. That is what they think of the rules of law.

So what we need to do is decide what is appropriate and what laws we are bound by, and we ought to set a good policy there.

I would say this: The Senator from New York is a good lawyer. He has said in his own view that torture sometimes may be necessary. That is what Senator SCHUMER said.

I think any Attorney General should properly advise any President of the

United States in time of war on absolutely what the limits of his powers are. Those are things that maybe ought not be bandied around the world. It is hypothetical. You don't know what the precise circumstances are.

But the question that started all of this is abuses in prison in Iraq. The memos at the center of this debate have absolutely no connection—there is no connection—between what went on in Iraq and these memos, because our soldiers were operating under established policies of the military and internal discussions between the President and various lawyers, or memoranda they may have received from various lawyers.

I want to say this about Attorney General Ashcroft. I was at the Judiciary Committee hearing when he testified. I saw him subjected to unfair abuse by former colleagues on that committee which was embarrassing to the committee. I don't think I have ever seen in my experience in this Congress the kind of disingenuous and unfair treatment of a former Member of this body. It was not right. The ranking member was using the whole time to make a litany of distortions and charges against the Attorney General where he had no opportunity to answer them. He knew there was no way he could. It was not right. It was wrong. I said that then, and I say it now. He had no opportunity to respond to the ranking Member. Senator LEAHY knew it, and said these things one right after another: You did this, you did that. They continued in that vein.

The question here was, Oh, he wouldn't define torture, yet he had a memorandum defining torture.

That is not what Attorney General Ashcroft said. Go back and read the transcript. I saw what he said. Attorney General Ashcroft is a smart man, an honest man, and he answered the question directly. He said, Senator, the Congress defined torture. It is not for me to define torture. You define torture. The Attorney General doesn't define torture. I am not defining torture. The Congress has already defined it.

There is a statute. I have a copy of it here in which we defined it under certain circumstances. We set out an anti-torture statute. That is what the Attorney General was referring to.

Then somebody with great demand said, We want these memos; you are going to give them right now. Are you giving them or not? The Attorney General sat there in a nice, direct, soft way, and said, No, Senator, I am not giving you these right now. Are you claiming executive privilege? He said, No, I am not claiming executive privilege.

These are memorandum submitted to the President of the United States. It is the memorandum of his client. It is the President's memorandum. It is not his to give. He can't go around giving out the confidential information he sent to the President of the United States about what he can do during the

conduct of a war. That is not right. He didn't do it. And he didn't back down on it. One of the Senators said, Well, this is important because I have a son in uniform. The Attorney General said, My son has been in Iraq. He just got home, and he is going back to Iraq. He is in uniform, too. I care about this issue.

I don't think what has been said is fair.

With regard to the amendment that is pending, I reject it. We need to vote it down. It is political. It is designed to embarrass this administration politically, and it hurts us around the world. We are asked to cast a vote suggesting that this administration has not conducted itself in a proper way. The evidence does not show that.

I am on the Armed Services Committee as well as the Judiciary Committee. We have had, I think, four hearings in Armed Services. We brought back the top general. We had the Secretary of Defense, Secretary Rumsfeld. We had Secretary Wolfowitz, the Deputy Secretary. We had General Abizaid and General Sanchez. We had General Taguba who went over there and conducted the investigation and issued the report on it.

I heard all of that evidence. None of them said, Well, we got a memorandum from the Attorney General that the President of the United States signed off and said we are supposed to torture prisoners, we are supposed to carry them around, move them around and put hoods over their heads, and otherwise abuse them.

There is no evidence that was so. In fact, the military had a pretty good series of policies about how to treat prisoners. Some said, some of them went too far. If some of them went too far, let's hear exactly what they say went too far and what was wrong. If we need to change that policy, I am willing to discuss that. In fact, we are discussing that at this very moment.

A number of the things that were so objectionable, none of the things that happened in that prison, were in any way remotely connected to the memorandums and directives and regulations issued by General Sanchez and the commanders in Iraq. In fact, all the memorandum said they should follow Geneva Conventions in how they handle prisoners.

Some say we did not train them about the Geneva Conventions. Every American soldier is trained about the Geneva Conventions. I was in the Army Reserve for 10 years. I was a lawyer and U.S. attorney for some of that time, and for a short period of time I was a JAG officer. I taught a course on the Geneva Conventions. You had to sign a document saying you briefed your soldiers every year on the Geneva Conventions.

Everyone knows you cannot torture prisoners, you cannot display them in sexual ways. Everyone knows that. Every private is taught that. Everyone up to the generals is taught that. It is



not the way we are supposed to treat people. Certainly it was not justified and not the policy of the military. It never was the policy of the military. I don't appreciate the suggestion that this was the policy of the military and that somehow the internal memorandums up in the Department of Justice in Washington about hypotheticals and what powers the President might have somehow were carried out in the prisons. They had established policies.

I saw in the Washington Times today, quoting one of these memos, a memo entitled "Humane Treatment." That ought to make some people around here happy. It actually says "Humane Treatment of Al-Qaida and Taliban Detainees." That is a pretty good title for a memorandum. They are complaining about some military memorandum they did not like the title of, saying the title suggested something bad and within the memorandum there were commands to preserve and protect the prisoners.

This title is a good title. President Bush says he accepts "the legal conclusion of the Attorney General and the Department of Justice that I have the authority under the Constitution to suspend Geneva as between the United States and Afghanistan, but I decline to exercise that authority." Of course, our values as a Nation call for us to treat detainees humanely, including those who are not legally entitled to such treatment.

Now, what is all this about? Senator HATCH mentioned, as I believe Senator CORNYN did, and several years ago in the Judiciary Committee we had a number of hearings right after September 11 on what the authority of the United States is with regard to treatment of prisoners and the application of the Geneva Conventions. The Geneva Conventions do not apply to unlawful combatants. It is that simple.

What is an unlawful combatant? It is a person who does not wear a uniform, who enters a country surreptitiously, who attacks civilians, and does not comply with the rules of war. Our enemies are supposed to comply with the rules of war also. Unlawful combatants do not comply with the rules of war. Al-Qaida does not. Most of the people in Afghanistan were not complying with the rules of war and the people who are bombing and killing in Iraq right now are not complying with the rules of war. All of them are unlawful combatants.

One of the reasons for the Geneva Conventions is to give protections to prisoners of war who were lawful combatants, to encourage people to be lawful combatants and not to be unlawful combatants, not to be terrorists who sneak around and bomb people.

Has this ever been dealt with in America? Are we making this up? Is this some idea the Senator from Alabama thinks is an idea that has never been dealt with before? No. In the Judiciary Committee we had a hearing on it and discussed these issues in some

detail not long after September 11. We had testimony and read and debated the Ex parte Quirin case. In Ex parte Quirin, the Nazis sent saboteurs into the United States to bomb and kill and dismantle our civilian structure. That was their plan. They were Nazi saboteurs. They were not wearing German uniforms. They were not acting in a way consistent with the regular Army. Their plan of attack was terrorist in nature. They were apprehended.

The President of the United States, certainly a greatly respected President for our Democratic colleagues who are pushing this legislation, President Franklin Roosevelt, was highly offended. He said we are not going to give them a trial in Federal court. We are not going to try them with a jury in the United States of America. These people are setting about to destroy our country, to kill our people, and to sabotage our civil infrastructure. They are going to be tried, as I have the power to do so, by a military commission. He so ordered it.

They were tried in the U.S. Department of Justice right down the street by a military commission. They did not have public trials. After completely trying the case and building a record and making findings of guilt, most of them were executed within weeks of their arrest. The validity of these trials were challenged and the case went to the Supreme Court of the United States. The Supreme Court affirmed the views of the President. Some of these enemy combatants were given probation and some of them who were tried that way were American citizens.

Crimes were committed in the United States by American citizens, but they were participating as unlawful combatants. They were tried by a military tribunal. They were convicted. Most of them were executed. Some of them got lesser times and one or two who co-operated got out of jail before too long. But all served a considerable amount of time and the Supreme Court said that was appropriate. That was right.

The history of the military commission is strong. That is justice. Military commissions do justice. Military officers are people. They do not want to convict innocent people, send innocent people to jail, or do things that are wrong. They are empowered in combat to use deadly weapons on a whole host of people that could kill them.

President Truman, who followed President Roosevelt, dropped an atom bomb on two cities in Japan. The President of the United States does have powers in wartime that are different from that kind of situation when somebody robs a bank down the street.

Fundamentally, what we are dealing with is how to deal with prisoners under these circumstances. Some people say, a lot of people in this country say, they don't respect us, they don't respect law, they bomb innocent civilians, women, men, children. They cut off people's heads and make a video of

it and brag about it. But they are not entitled to any rights. They are not entitled to any rights. We just ought to go at them and kill them, the sooner the better.

We have some in this body who say these terrorists are entitled to more rights than the laws themselves give. In fact, they have insisted on it. This resolution actually calls on the Government to give these terrorists and unlawful combatants more rights than they are entitled to under the law.

President Bush has said: I am going to comply with the Geneva Conventions. We are going to treat these people humanely. That is the right position, I believe, and that is what he has done. We have given them fair treatment.

I visited Guantanamo and saw how it was done down there early on. I believe they were treated very well. The reports that come out of there continue to show that.

We know we had a terrible problem in Abu Ghraib prison where, on a midnight shift, a group of soldiers were out of control. Now we have a desperate attempt by Members of this Senate to go around and say the abuses that occurred on that night were somehow the responsibility of the Secretary of Defense, General Sanchez, General Abizaid, President Bush, and John Ashcroft.

That is not true. It is wrong. It undermines our ability to lead in the world. It does, I believe, place greater risk on our soldiers who, at this moment, are on the battlefield in Iraq because we sent them there. We should not do that.

If you have legitimate complaints, let's have them, let's hear them in the Senate. But I do not believe we need to be suggesting there is a policy of this Government to mistreat people as was done in Abu Ghraib prison in Iraq.

We had a distinguished senior Senator who said we had traded Saddam Hussein's prisons for American prisons. What he meant by that was we were treating prisoners just as Saddam Hussein did. That is wrong. It is a slander on the soldiers of the United States. It should not have been said. When that was said, it got headlines in the terrorist camps all over the world. It should not have been said. It is false.

Not long ago I had the opportunity to meet seven Iraqi individuals who had had their hands chopped off in Saddam Hussein's prisons, with Saddam Hussein justice. We know of the thousands he had killed there—without trial, without any benefit of being able to put on a defense, and how he used, as a policy of his government, terror.

These kinds of dictators use random violence to terrorize a population to keep power. He did it systematically. This was one of the most brutal dictators in the history of the world. He killed hundreds of thousands of people. There are maybe 300,000 graves in that country of people who were killed.

So it is wrong to say that. Why we keep pushing this, I do not know. I will

just say this: The Armed Services Committee—we have this bill on the floor right now, and it has taken us too long, and it has caused us to not be able to have the hearings we probably would have had—but we are going to have more hearings on what happened in Abu Ghraib prison. Already people are being tried and convicted and sentenced for misbehavior there. We are going to keep on, and the higher up it goes, they are going to be followed.

I was a former prosecutor for some time, and I will ask anybody in this body to tell me: If a soldier is charged with committing an abuse on a prisoner, and he was ordered to do so, or there was some written document he was relying on to do this abuse, do you think he is not going to produce it? Do you think he is not going to say that in his defense? Certainly, he will. So if there are any higher-ups involved in this, it is going to come out.

But, frankly, I do not see the evidence that any higher-ups in the higher echelons of the Government ever issued any orders in any way that would have justified this. It did not happen at any time except on a midnight shift by a few people, who videoed themselves, videoed themselves in circumstances that would be very embarrassing to their mamas and daddies if they had seen it, I can tell you that, on their own behavior, much less what they were doing to the prisoners.

So I do not think it was a pattern. I do not think it was a policy. In fact, all the evidence we have seen so far shows it was not. Within 2 days of this information coming forward to the commanders in that region, General Sanchez ordered an investigation. He suspended people. The military announced publicly, in a public briefing in Iraq, that they were conducting an investigation of abuses at Abu Ghraib prison.

They have continued those investigations. A number of people have been charged criminally by the military. A number of them have had their cases end with punishments being imposed, and others will have them as time goes by. I would say, what more can you ask them to do? They are cracking down. I do not appreciate resolutions such as this that suggest it was a policy of the United States that this occurred, that suggest that our American soldiers are the same as Saddam Hussein's soldiers and prison guards—the way they treated their prisoners. It is not right. It is wrong. It should not be said, and it undermines the confidence that we ask the world and the Iraqis to have in our soldiers.

We believe they are going to do good work. We believe they are doing good work. We know, when you have 100,000, 200,000 soldiers over there, some of them will make mistakes. Just like any city in America that has 200,000 citizens, 130,000 citizens, some of them are going to commit crimes and make errors and do things wrong. They ought to be disciplined. They ought to be held

accountable. But we do not need to fire the mayor because somebody commits a crime on the streets of the city.

Mr. President, I see the Senator from Arizona is in the Chamber, and I know he may well have comments to make on this or other issues.

I will conclude by saying this is not a good resolution. It has no business here. It is contrary to what we ought to be doing.

We ought to be spending our time on how to help our military get a handle on this problem in Abu Ghraib, and we ought to be spending our time mostly on trying to help them be effective in dealing with, capturing, and killing the terrorists who reject all rules of law, who reject all Geneva Conventions, who believe they have a legitimate right to advance their personal power agenda by killing innocent people whenever and wherever they can.

I am most grateful that we have American soldiers this very moment following the vote of this Congress and executing the policy we ask them to execute in Iraq to further freedom and liberty around the world.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Arizona.

#### EXEMPTIONS TO BILATERAL TRADE AGREEMENTS

Mr. KYL. Mr. President, I am going to talk about an amendment which I would have offered to the Defense authorization bill, but in the interest of time and to ensure that we can move the bill forward and complete work on that bill this evening, I am not going to do so.

But I would like to discuss the general subject of the amendment, and begin by complimenting the chairman of the Armed Services Committee, the Senator from Virginia, on recognizing the very important necessity of changing our law to help work very closely with two of our greatest allies, the United Kingdom and Australia.

We transfer a lot of technology back and forth between these two important allies. It is important that we have the capability of doing that. One of the amendments I believe will be adopted as part of this Defense authorization bill is a proposal of the distinguished chairman that would provide an exemption from U.S. law which requires that a bilateral agreement covering a specified set of issues be negotiated in order for a country to obtain an export control waiver. The bilateral agreements between the United States and the United Kingdom and Australia don't quite meet the standard set by U.S. law, so Congress needs to grant an exemption for this. The chairman's amendment is very important in creating this possibility. I strongly associate myself with that amendment.

Just a note or two about this relationship between the United Kingdom and Australia and the United States which illustrates why it is so impor-

tant for us to have this kind of cooperation. I think everybody knows the United Kingdom is our strongest ally in the war on terror. In addition to the over 8,000 personnel they have provided for the military operation, they support food aid. They have contributed a tremendous amount of money for reconstruction. Everyone is aware of their contribution. Perhaps less well known is the contribution that the Australian defense force has made. They contributed about 2,000 of their personnel, including a squadron of FA-18s and special forces elements, two navy frigates. They have a full variety of operations that I won't get into here. They have also been cooperative with us in a lot of other areas such as missile defense programs, and so on.

It is for this reason that the chairman offered his proposal, which I am sure will become part of the Defense bill, that will make it easier for us to transfer equipment that is important to defense between the United States and Great Britain and Australia.

The amendment I was going to offer simply added or would have added another element to that. We won't do it in this bill. Perhaps in conference with the House or at some other point, we could do that.

It is an amendment that would make sure that in the transfer of important munitions between the United States and a country such as Great Britain, they would never get into the wrong hands. That is to say, they wouldn't be exported to a country that might potentially use them against the United States. The reason it is a problem is that some countries in Europe, for example, are talking about lifting the arms embargo that currently exists between those countries, the United States, and China.

We do not send China our most sophisticated military equipment. There is a good reason for that. China has announced plans that it is developing military equipment that could directly compete with the United States in military conflict. So, obviously, we don't want to have a law on the books that would make it easy for a country such as China to acquire military equipment that we share freely with our allies, such as Australia and the United Kingdom, but which we would not want to go to a country such as China.

That is the reason for my concern about this retransfer issue. The news reports have indicated, for example, that the United Kingdom might agree to support the lifting of the European Union's arms embargo against China. That would be an important event. What my amendment would have done is simply said if the European Union were to lift its arms embargo against China, then no U.S. military equipment could be transferred to entities in the European Union unless the President certified to Congress that there are binding assurances from those entities that our military equipment would

not be transferred to China. That is a pretty reasonable proposition.

The State Department strongly opposes the European Union's lifting of the arms embargo. Secretary of State Colin Powell said the following on March 1:

Regarding arms sales to China, I expressed concern that the European Union might lift its arms embargo. We and the European Union imposed prohibitions for the same reasons, most especially China's serious human rights abuses, and we believe that those reasons remain valid today.

It is this government's policy that the arms embargo remain in effect. We are talking about military arms now, not trade. We have a huge amount of trade with China. We are not talking about that. We are talking about limiting certain kinds of militarily useful equipment.

At a February hearing of the U.S.-China Economic Security Review Commission, the Deputy Assistant Secretary in the State Department for East Asian and Pacific Affairs, Randy Shriver, also expressed U.S. opposition to the European Union's lifting of the embargo for three key reasons: the human rights reason, China's lax export control policies, and China's military buildup against Taiwan. Similar concerns have been put forth by Department of Defense officials.

While we don't like to talk about it, there has been a change in the direction of the buildup of the Chinese military. They have changed their doctrine to a doctrine which explicitly is designed to be able to defeat U.S. military assets. They are proliferating dangerous weapons and technologies to some of our potential adversaries—North Korea, as one example.

The intelligence community produces a semiannual report on proliferation. The most recent report stated the following with respect to China:

We cannot rule out . . . some continued contacts [related to assistance to unsafeguarded nuclear facilities] subsequent to the pledge between Chinese entities and entities associated with Pakistan's nuclear weapons program.

. . . Chinese entities continued to work with Pakistan and Iran on ballistic missile-related projects during the first half of 2003 . . . Chinese-entity ballistic missile assistance helped Iran move toward its goal of becoming self-sufficient in the production of ballistic missiles. In addition, firms in China provided dual-use missile-related items, raw materials, and/or assistance to several other countries of proliferation concern—such as Iran, Libya, and North Korea.

During the first half of 2003, China remained a primary supplier of advanced and conventional weapons to both Pakistan and Iran. Islamabad also continued to negotiate with Beijing for China to build up to four frigates for Pakistan's navy and develop FC-1 fighter aircraft.

China also continues to threaten democratic Taiwan and to prepare militarily for a conflict against not only Taiwan, but also against the United States, were U.S. military forces to come to the assistance of Taiwan directly.

According to one recent Washington Post article, the Chinese Government

warned Taiwan's President Chen Shui-bian to pull back what he called "a dangerous lurch toward independence or face destruction."

The Defense Department's annual report to Congress on the military power of the People's Republic of China warned

. . . the focus of China's short and medium term conventional modernization efforts has been to prepare for military contingencies in the Taiwan Strait, to include scenarios involving U.S. intervention.

According to a previous report, the U.S.-China Security Review Commission, now the U.S.-China Economic and Security Review Commission, China's military was directed to have viable options to retake Taiwan by 2005 to 2007. Let me repeat: China's military was told to be prepared for conflict with Taiwan by next year.

The DOD report further comments on the impact of the EU lifting its arms embargo stating:

Efforts under way to lift the European Union embargo on China will provide additional opportunities to acquire specific technologies from Western suppliers.

That is precisely the problem I think we have to come to grips with at some point. I am extraordinarily supportive of efforts to show political support for and, in fact, enhanced military cooperation with our allies, as the Warner amendment certainly does. But I also think we have to look at the export control policies which might, were the European Union to lift the arms embargo, allow material weapons implications to reach a country such as China. We obviously cooperate with China on matters of trade, for example. And it plays an important role in the international community. But it is a country with 20 nuclear-tipped missiles capable of reaching the United States, and the Pentagon projects that number will reach 30 by next year.

It is a country that has an announced policy that would be very dangerous if implemented with respect to Taiwan. So if the EU lifts its arms embargo, European countries will have the capacity to willingly pass military technology, and U.S. military technology, if we don't have the proper transfer or retransfer protections in place to a country that presents a potential military threat to the United States.

My amendment would have prevented that from happening by simply saying that no U.S. military equipment could be provided to countries in the European Union unless there is a Presidential certification that there are binding assurances from such country that those goods won't be transferred to China.

I don't think that is too much to ask. I think at some point we are going to have to include that within our law. The chairman of the committee has been very gracious in talking to me about working toward that end. As I said, I think in view of the great importance of moving this bill forward, completing action on it so we can pro-

vide the authority for the Defense Department and the other forces necessary for the next year, I am not going to offer my amendment. I certainly hope at an appropriate time we will be able to include the concept of what I am talking about in this Defense authorization bill.

I compliment the chairman for the work he has done, and I express my hope we can conclude this bill soon. We have been on it now for almost a month, or half a month with respect to legislative days. I think it is time to come to an agreement on how to end debate and get it done. After all, we are in a war. We have to protect the American people and provide for the men and women we have put into harm's way for that purpose.

Mr. WARNER. Mr. President, I thank our distinguished colleague from Arizona. He has been part of the team that has worked almost every day for agreements on the floor, and in consultation on how to deal with the various challenges we have had. He has been one of many who has made it possible. I think we are making steady progress here. I thank the Senator for the reference to the ITAR amendment, which I put in. I consulted with him, Senator BIDEN, and a great many Senators who worked with me in making this amendment possible, which is currently a part of the managers' package and, I anticipate, will become part of the final bill. It is long overdue, as the Senator points out. But this amendment is sort of a keystone. I thank the Senator for adding that very important piece of legislative history to what I hope will be a statutory provision that reflects the goals we both had in mind.

At this time, I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I don't know the situation regarding this bill.

The PRESIDING OFFICER. The Senate is in morning business.

Mr. WARNER. The bill is still actively being considered. There is a possibility we can achieve completion of the bill tonight. I remain of that view.

Mr. STEVENS. Mr. President, are we in morning business?

The PRESIDING OFFICER. Yes, we are in morning business.

#### DEFENSE APPROPRIATIONS

Mr. STEVENS. Mr. President, I have come to the floor because I am worried about the Defense appropriations bill. This bill that has been prepared by primarily Sid Ashworth and Charlie Houy of our Defense Subcommittee, under the direction of my cochairman Dan Inouye and myself, was considered by the Subcommittee on Defense Appropriations and reported to the full committee in 17 minutes. We took it to the full committee and we had a debate on that bill. It was reported to the floor in 25 minutes.

The reason for that is, as we all know, there is in this bill an amount of

\$25 billion requested by the President for a reserve for Iraq and Afghanistan and the war on terror. We know if there is a development in Iraq, in particular, which will give rise to a need for money, this bill must become law before we leave for the conventions in August, or really late July, before the August recess.

Some of us in this body have served overseas, particularly in wartime. It was my privilege to do that in World War II. I was thinking just now about what is going on here on the floor, and how I used to feel as a young man when we were told our supplies had not come over the hump into China, that we were going to have to reduce our rations, maybe live a little more on local food than on the food we brought into China from a long distance from our country. I thought about the time Colin Powell, as a young assistant to the then-head of the National Security Council, came before a Senate subcommittee on appropriations, and he told us at the time, when he was a young captain in Cambodia, he had the duty to take out a whole Vietnamese battalion, and the U.S. troops along with him had to go into Cambodia on a drop mission. They parachuted in. They were given a 2-week supply of food. He told us when you get up on that 14th day and open up the last bit of your rations, that is when you start thinking about the people who are in Washington that you trust. That is when you start thinking about whether the people who run the Government know what they are doing when they send you into foreign countries, like Cambodia, in wartime.

As I speak now, there are men and women in the armed services in our U.S. uniform in 120 countries. Managing the Department of Defense is an overwhelming job right now. The money we are spending is enormous, but the cause we are on is just. Whether you feel it is just or not, the problem is, we now know that when we leave for the conventions, there is a great possibility the Department of Defense and Commander in Chief will have to have more money available than is currently available in fiscal year 2004. Our committee, the Defense Appropriations Subcommittee, and the Appropriations Committee, has worked long hours to bring this bill before the Senate so we can pass it before we leave on this recess for the Fourth of July, and be able to come back and be ready to conference it, because staff conferences during the recess, and bring it back to the floor so both the House and the Senate can pass the bill and get it to the President and have it become law before we leave before the end of July.

I hear a lot of comments from people about the problem of the debt ceiling. I have checked and, in all probability, we will reach the debt ceiling in August. There is a debate on how to handle that. The House has decided to put it in the Appropriations bill, and I have

been asked, as manager of the bill, to commit that I will not bring this bill back from conference with a debt ceiling in it. I can make no such commitment. Neither the Senator from Hawaii nor I can make that commitment. We are committed to doing our job as Senators, carrying out our oath to support and defend the Constitution and the people who support the Constitution.

I, for one, am getting a little impatient about getting this bill done. The current bill, I was told, would be done last night, and we would be on our bill now. We are not on the Defense bill now. We should be on the Defense appropriations bill now.

I hope and pray every Senator in this body will search his soul about delaying this bill, because I mean what I say: there is no possibility of getting this bill to the President, in my judgment, in a matter of 10 days after we get back unless we pass it now, and the President has time to go through the bill to determine if he is going to sign it.

I implore the Senate to finish this bill. Either the Senator from Hawaii or I have been chairman of the Defense Subcommittee since 1981. We have never found a situation where we would even consider cloture on the Defense appropriations bill.

I cannot imagine a Member of this Senate voting against cloture on an appropriations bill for defense when there is a war going on.

I say to the Senate, it is time to come to our senses and get this authorization bill done tonight so we can get on the appropriations bill tonight and finish it tomorrow or, at the latest, Friday morning. If we can get this bill through the subcommittee in 17 minutes and 25 minutes in the full committee, this Senate can get through this bill in 36 hours.

I guarantee, if there is any thought of delay, we will stay in session 36 hours because I am going to see to it this bill is passed and goes to the President this week. Some people say it is not going to happen, but if I have to embarrass every Member of the Senate to get it done, I am going to do it. This bill must be passed. We are at war. We are at war.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CRAPO. Mr. President, I ask unanimous consent that the order for the quorum all be rescinded.

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

#### CHILD NUTRITION AND WIC REAUTHORIZATION ACT OF 2004

Mr. CRAPO. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 580, S. 2507.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2507) to amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to provide children with increased access to food and nutrition assistance, to simplify program operations and improve program management, to reauthorize child nutrition programs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. COCHRAN. Mr. President, I am pleased to present to the Senate S. 2507, legislation to reauthorize the child nutrition programs administered by the U.S. Department of Agriculture for the next 5 years. Over the past year and a half, the Committee on Agriculture, Nutrition, and Forestry has held hearings and received suggestions from a wide range of interests for improvements in the programs that are authorized in this bill. The committee worked diligently to draft a consensus bill that will ensure the continuation of proven Federal Government support for meeting the nutritional needs of school children and others who will benefit from these programs. I would like to thank especially the distinguished ranking member of the committee, the Senator from Iowa, Mr. HARKIN, for his assistance and for continuing the longstanding tradition of a bipartisan approach to the development of child nutrition bills in our committee.

The committee met on May 19, 2004, and reported the bill unanimously. This bill reflects the commitment of the committee to ensure that our Nation's children have access to the nutrition they need to lead a healthy life. All of the worthwhile and important initiatives contained in this bill will play a significant part in ensuring that our children have access to good nutrition.

The programs authorized in this bill touch the lives of one out of every five people in this country, including over 37 million children and nearly 2 million lower income pregnant and postpartum women. According to the Congressional Research Service, total fiscal year 2004 spending for these programs will be an estimated \$16.4 billion, and the administration's fiscal year 2005 budget anticipates spending \$16.85 billion. The Budget Committees of both the Senate and House have seen fit to include new mandatory money that will enable us to continue otherwise expiring provisions contained in current law. Even though we had no money for new initiatives, we believe the committee has put together an overall package that improves these programs while protecting the interests of the participants.

Important components of the bill are: Protection of the integrity of school meal program benefits, participation of for-profit child care centers in the Child and Adult Care Food Program,

protection of school meal benefits for military families, expansion of the Summer Food Service Program Lugar Pilots, expansion of the Fruit and Vegetable Pilot Program, and improvements to the WIC Program.

I would also like to clarify section 203(e)(10) of the bill, which is designed to contain costs in the WIC program in order to ensure that all eligible participants can receive benefits through the program. Given the new provisions in the law, it is important that States publish their allowable reimbursement levels for WIC program vouchers. Also, because of changes contained in the bill, it would be important for USDA to review and modify risk profiles used when examining retail food stores for compliance with program rules. There is a related provision in our bill that prohibits certain vendors from providing incentive items to entice program participants to come to their stores unless the free merchandise is food or of nominal value. The Secretary is given the authority to define merchandise of nominal value. A reasonable interpretation of this provision would permit the Secretary to prohibit stores from giving away lottery tickets. Given the extremely small chance of winning a large amount of money as advertised by the lottery, the actual ticket is probably of very little value. However, some observers' perceived value of a ticket is greater than the actual value. A reasonable interpretation of this provision would give the Secretary the authority to prohibit lottery tickets under this provision.

We have worked hard to craft a bipartisan, consensus-based bill, as evidenced by the letters of support we have received from organizations including the American Dietetic Association, the American School Food Service Association, America's Second Harvest, the Food Research and Action Center, National Council of La Raza, Bread for the World, the National Milk Producers Federation, the International Dairy Foods Association, and the National Food Processors Association. I urge my colleagues to support the bill.

#### ADDITION OF NEW STATES TO THE FRUIT AND VEGETABLE PROGRAM

Mr. HARKIN. Mr. President, I hope to clarify our intent on one provision of the Child Nutrition and WIC Reauthorization Act of 2004—the provision pertaining to the Fruit and Vegetable Program.

When the Fruit and Vegetable Program was first enacted as part of the 2002 farm bill, the legislative language did not specify which States were to be participants in the program, but the States were specified in the conference report. The Department of Agriculture followed the conference recommendations.

Because we are passing this bill with a somewhat unusual process that will not involve a conference report, I would like to clarify which States are intended to be added to the program.

Committee staff discussions have intended that the additional States to participate in the Fruit and Vegetable Program are Mississippi, North Dakota, and South Dakota, and this was our understanding as we finalized this bill. I am in agreement with these discussions, and it is on this basis that we are completing this bill.

Mr. COCHRAN. I do not disagree with the Senator from Iowa.

#### INCENTIVE CRITERIA FOR REDUCTION OF NONRESPONSE RATES AND SUBSTITUTION

Mr. HARKIN. Mr. President, I hope to clarify the operation of certain provisions in the bill. As the chairman knows, the section of the bill titled, "Household Applications," provides school districts with an incentive to reduce the nonresponse rate during the income verification process. I would like to offer an example of the operation of 10-percent improvement criteria in nonresponse rates, so that the committee's intent is not misinterpreted. A district with a non-response rate of 40 percent, for example, would have to reduce its nonresponse rate to 36 percent, in order to meet the 10-percent improvement criteria and be entitled to maintain existing verification procedures under current law.

Mr. COCHRAN. The Senator is, indeed, correct in his calculations. The provision calling for a 10-percent improvement in S. 2507 would operate in precisely the manner that the Senator from Iowa described.

Mr. HARKIN. I thank the chairman. I would also like to discuss the new substitution provision in the bill. In some school districts in my State and across the country, there are children whose household income is extremely difficult to verify, no matter how vigorous the effort put forth by school officials. The applications I am referring to are for children whose parents regularly do not respond to other school communications or are from a community that is suspicious of questions from governmental entities, including school districts. The families of these children may no longer be residing at the address of record, are not reachable by phone, or may exhibit other such barriers to verification. Am I correct that these are the type of applications envisioned in the bill's subparagraph titled "Individual Review"?

Mr. COCHRAN. The Senator is once again correct. This bill recognizes that there are certain situations when it may be nearly impossible for a school district to get in touch with the families of children who are eligible for this program. In situations such as those the Senator described, and other similar ones, the school district may decline to verify up to 5 percent of the approved applications selected for verification and replace those applications with other approved applications.

Mr. HARKIN. I thank the chairman.

#### IMPORTANCE OF BREAKFAST

Mr. CHAMBLISS. Mr. President, I appreciate the chairman giving me this opportunity to emphasize the impor-

tance of breakfast and the positive effects breakfast has on student performance and behavior. Research shows that children who eat breakfast perform better on standardized achievement tests and have fewer behavior problems in school. Breakfast improves a child's physical endurance and motor performance. It has been found that children have more energy to get through the school day.

The Department of Agriculture's Center for Nutrition Policy and Promotion has shown that children who eat breakfast have more healthy overall diets. Given the Nation's attention to childhood obesity, breakfast can also play a positive role in ensuring that our children are healthy. Not only is eating breakfast important for student performance, breakfast is also an effective tool to manage and control weight. Breakfast consumption can play a key role in maintaining healthy eating habits and weight loss while Congress looks at ways to combat childhood obesity.

In a major study, regular breakfast consumption was associated with the ability to maintain a significant weight loss. One study showed that out of 2,900 individuals that had maintained a 30-percent weight loss for at least a year, 78 percent reported eating breakfast everyday. Breakfast skipping has been reported to be more prevalent in obese children and is particularly high in obese girls. More than a dozen studies from around the world have reported that eating a ready-to-eat, RTE, breakfast cereal provides many nutritional benefits, including consumption of less total fat, less saturated fat, less cholesterol, more dietary fiber, and more vitamins and minerals. This result is independent of age and geography as studies have been conducted in children, adults and the elderly in over six different countries.

This compromise bill contains provisions which will, hopefully, result in more children eating more breakfast. The Child Nutrition and WIC Reauthorization Act of 2004 includes three provisions that the committee hopes will result in more children eating breakfast. First, it provides increased assistance to schools with a high proportion of poor children. Second, it expands the eligibility for schools that need additional assistance—severe need assistance—for breakfast programs. In relation to these provisions a Review of Best Practices in the Breakfast Program, also contained in this bill, will allow for a study of State and local barriers that keep more schools from offering breakfast. The Secretary will make recommendations and describe model breakfast programs that will help schools to overcome these obstacles and disseminate the results of this study to school districts, to the Senate Committee on Agriculture, and to the House Committee on Education and the Workforce. As a result, schools will be encouraged to develop innovative strategies to make time for student

breakfasts, such as breakfast on the bus or breakfast in the classroom, a practice that has been shown to be very effective in schools across the country. Breakfast on the bus or in the classroom does not require the use of a cafeteria or additional time in the school day and are easy and efficient ways to provide a nutritious meal to children.

Mr. President, I ask the chairman if he agrees with my statements?

Mr. COCHRAN. Mr. President, I agree with the distinguished Senator from Georgia on the importance of breakfast to our children's education.

Mr. CHAMBLISS. Mr. President, I thank the chairman for his comments.

#### WOMEN, INFANTS, AND CHILDREN PROGRAM

Ms. MURKOWSKI. Mr. President, I wish to address a provision that Senator COCHRAN has added to the Child Nutrition and WIC reauthorization bill on my behalf.

Mr. COCHRAN. Mr. President, this provision is being added as a part of the floor consideration of this legislation. Therefore, there is no accompanying report language which explains its effect. We appreciate the contribution the Senator from Alaska has made to the Senate's consideration of this legislation. Will the Senator please share her views on this provision?

Ms. MURKOWSKI. Mr. President, the provision in question requires the Secretary of Agriculture to conduct a periodic scientific review of the supplemental foods available in the Women, Infants, and Children Program, which is also known as the WIC Program. The Secretary shall undertake such a review as frequently as necessary to reflect the most recent scientific knowledge. Following such a review, the Secretary shall amend the list of supplemental foods in order to reflect nutrition, science, public health concerns, and cultural eating patterns.

Mr. COCHRAN. Mr. President, I would like Senator MURKOWSKI to explain her rationale for offering this provision.

Ms. MURKOWSKI. In October 2000, the American Heart Association, AHA, published updated guidelines for reducing the risk of heart disease. These guidelines noted that fatty fish, such as salmon, are high in omega-3 fatty acids. Such acids help in the prevention of heart disease in a variety of ways. The acids diminish the likelihood of sudden death, as well as abnormal heart rhythms that play a role in sudden death. The oils of fatty fish also decrease blood triglycerides, as well as blood clotting.

The Food and Drug Administration has also previously suggested that there are health benefits to regularly consuming up to 3 grams of omega-3 fatty acids per day. To illustrate a practical example, a piece of salmon that is a little over 3 ounces in weight includes about 1 gram of such fatty acids. Therefore, it would be very easy to comply with this suggestion. I un-

derstand that later this year, the Food and Drug Administration is likely to make an official determination that the consumption of omega-3 fatty acids will reduce the risk of coronary heart disease. The provision in the WIC reauthorization bill will require the Secretary to conduct a periodic review of the list of supplemental foods and take into account the most recent scientific knowledge, such as the expected FDA determination regarding omega-3 fatty acids, when recommending any additions to the list of supplemental foods. Should salmon be included in the list of supplemental foods, it would then allow all States to include salmon as an acceptable food for their respective WIC recipients.

Mr. COCHRAN. Mr. President, I appreciate the Senator's explanation.

Ms. MURKOWSKI. Mr. President, I thank Senator COCHRAN for including this provision in this important bill.

#### MEDICAID DIRECT VERIFICATION AUTHORITIES

Mr. HARKIN. Mr. President, The Child Nutrition and WIC Reauthorization Act of 2004 includes several provisions intended to improve program integrity and to provide local educational agencies with new tools with which to improve the administration of the school lunch and school breakfast programs. One of the steps that we have taken in this bill is to allow various Federal programs to share information that they may have about a child's income or participation status with local educational agencies so as to enable the local educational agency, using that information, to verify a child's eligibility status for free or reduced-price school lunches or school breakfasts.

In most cases, this bill has not amended any laws outside of the jurisdiction of the Senate Committee on Agriculture, Nutrition, and Forestry in order to accomplish this goal—with one exception. The bill does amend section 1902(a)(7) of the Social Security Act, a section pertaining to the Medicaid program. This change to Medicaid law allows, at the option of a State, the sharing of Medicaid information with local educational agencies for the purpose of verifying the certification of children for free or reduced price lunches or breakfasts under Federal child nutrition programs.

The Senate Finance Committee, which has jurisdiction over the Social Security Act and Medicaid law, has very graciously allowed us to make this change for the purposes of this bill. I thank the Finance Committee for working with our committee to strengthen Federal child nutrition programs.

It is my understanding that Medicaid eligibility can be based on a number of factors, some of which may be related to disability or other matters that have nothing to do with verifying income in the School Lunch Program. I want to clarify that the intent of the amendment to Medicaid law contained within the Child Nutrition and WIC Re-

authorization Act of 2004 is solely for the purpose of verifying income and participation information for School Lunch and Breakfast Programs. It is not the intent of this legislation to allow any other information to be shared.

I do not believe that the amendment can be interpreted to allow the sharing of Medicaid information that goes beyond the scope of verifying eligibility for school lunch or school breakfast benefits, but in the interest of being completely crystal clear, I would like to state that, under the amendment to section 1902(a)(7) of the Social Security Act contained in the Child Nutrition and WIC Reauthorization Act of 2004, no Medicaid information, except that which is necessary to verify income and eligibility for school lunch or school breakfast participation, may be shared by a State with a local educational agency.

Mr. COCHRAN. The explanation that Senator HARKIN has offered with regard to this provision of the Child Nutrition and WIC Reauthorization Act of 2004 is absolutely correct and is consistent with the committee's intent. In including the amendment to Medicaid law, it was certainly not our goal or intent to allow all Medicaid information to be shared with local educational agencies. We intended to allow States to share only such limited Medicaid information that was necessary to verify eligibility in the School Lunch or School Breakfast Programs. Any interpretation to the contrary is inconsistent with the intent of the Senate Committee on Agriculture, Nutrition, and Forestry.

Mr. BAUCUS. As a member of the Senate Committee on Agriculture, Nutrition, and Forestry, but also as the ranking Democrat on the Senate Finance Committee, I would like to thank Agriculture Committee Chairman COCHRAN and Ranking Member HARKIN for their clarification on this point.

The Senate Finance Committee has long grappled with the challenges of allowing sensitive program information to be shared. While there are many cases where it is in the public good to share limited amounts of information, such as in this case, it is important that we take such steps carefully and that we not inadvertently or unintentionally allow more information to be shared than is absolutely necessary to accomplish our goals.

The amendment to the Social Security Act that is under consideration ensures that only certain Medicaid information can be shared with local educational authorities for the purpose of verifying eligibility and income with respect to the School Lunch and School Breakfast Programs. Information about a child's health or disability status or medical expenses would not be relevant to verifying eligibility for school breakfast and lunch programs, which is based only on the child's family income. Accordingly, information



about a child's health or disability status or medical expenses could not be shared with local educational agencies under the authority of this Medicaid amendment. I thank the chairman and the ranking member for clarifying the narrow goals of the amendment and look forward to its implementation in a manner that is consistent with the committee intent.

Mr. GRASSLEY. I appreciate that my colleagues on the Senate Agriculture Committee have worked collaboratively on the Medicaid provision, which is under the jurisdiction of the Senate Finance Committee. I am pleased that we were able to work out a provision which may help more children who are eligible receive free or reduced price breakfasts and lunches. I commend my colleagues for their good work on this important legislation.

I agree with my colleagues, Senators COCHRAN, HARKIN, and BAUCUS, that this Medicaid amendment will not authorize States to share Medicaid information other than that which is necessary to verify a child's participation in Medicaid or his or her family income.

USDA INTERPRETATION OF SECTION 32 FUNDING  
IN THE 2002 FARM BILL

Ms. STABENOW. Mr. President I rise to clarify an important issue with the distinguished chairman of the Agriculture Committee.

First, I thank the chairman for his leadership in getting this child nutrition bill to the floor. He has worked hard and has produced a good, bipartisan bill which I supported in the Committee.

For over 2 years, a bipartisan group of Senators and I have been concerned about USDA disregarding language included in the 2002 farm bill. The 2002 farm bill, section 10603, states that at least \$200 million must be spent annually on the purchase of specialty crops. However additional language included in the 2002 farm bill conference report states:

[t]he Managers intend that the funds made available under this section are to be used for additional purchases of fruits and vegetables, over and above the purchases made under current law or that might otherwise be made without this authority. The Managers expect the \$200 million to be a minimum amount for fruit and vegetable purchases under section 32 funds; it is not intended to interfere with or decrease from Agricultural Marketing Service's historical purchases of fruit and vegetables [e.g. \$243 million in 2001; \$232 million in 2000] or to decrease or displace other commodity purchases.

Does the chairman agree that this language is clear and that the intent of Congress is \$200 million in new purchases on top of existing commodity purchases?

Mr. COCHRAN. I agree that the Senator from Michigan has correctly cited the conference report of the 2002 farm bill, and I appreciate all of her hard work on this issue.

Ms. STABENOW. This was a great victory for our children because they

need more and more fruits and vegetables in their school lunches. We all know about the problem we have with kids eating too much junk food for lunch and this program would have put more nutritious foods on our children's lunch trays. Instead of eating candy, they could be eating nutritious foods like apples, pears and carrots.

Unfortunately, the USDA is not complying with this provision. Instead of adding the \$200 million on top of baseline spending, USDA has eliminated the baseline spending, so there is no guarantee that there will be any new spending on fruits and vegetables for our children. In fact in 2002, USDA did not even meet the minimum purchase requirement. In 2002, only \$181 million in fresh fruits and vegetables were purchased under section 32.

Does the chairman agree that the USDA is misinterpreting the farm bill with regards to section 32, fresh fruit and vegetable purchases?

Mr. COCHRAN. I agree that the USDA has not followed the language from the 2002 farm bill conference report. I suggest that the Senator from Michigan and I work with USDA to try to facilitate greater purchases of fruits and vegetables in the nutrition programs.

Mr. HARKIN. I am proud of our bipartisan work on the Child Nutrition and WIC Reauthorization Act of 2004 and want to thank the chairman for his efforts and leadership. This is a bill that deserves to pass overwhelmingly with tremendous bipartisan support, as it did in the Senate Committee on Agriculture, Nutrition, and Forestry. That it can gain the unanimous support of the entire Senate, as I believe that it will, is to me, a hopeful sign of broad support for initiatives in the interest of our Nation's children.

In addition to Chairman COCHRAN, I thank the staff who have worked on this bill. They may never receive the full credit that they truly deserve, but without them this bill would not have come to fruition. On Senator COCHRAN's staff, I would like to thank Hunt Shipman, Eric Steiner, Graham Harper, and especially Dave Johnson, who has been with the Senate Committee on Agriculture, Nutrition, and Forestry for fifteen years. During that time, he has played a key role in strengthening our country's child nutrition and food assistance programs. On my own staff, I would like to single out for thanks the great work of Derek Miller and Susan Keith as well as the Democratic Staff Director, Mark Halverson, who has served me ably for many years.

Given the budget constraints that our committee faced in crafting the legislation, I believe that this bill is a very positive step forward in allocating resources wisely.

In the United States, we face an unfortunate paradox. On the one hand, the specter of malnutrition and hunger continues to haunt millions of Americans, especially children. At the same

time, we are confronted with a grave public health threat in the form of obesity and overweight which are quickly becoming a major threat not just to individuals but to our Nation as a whole. The reauthorization of child nutrition programs affords us an opportunity to tackle both of these issues. This bill does so, although not always to the full extent that I would have preferred.

This bill makes many positive changes to fight childhood hunger and deliver federal child nutrition benefits to more children.

First, this bill ensures that children who are receiving food stamps will automatically receive school lunches and breakfasts as well. Though States and schools already have the authority and discretion to do this now, not all of them take advantage of this option. The bill before us today clearly makes those children eligible for free school meals—a step that, according to USDA, will help 200,000 additional children have healthy school meals by 2009 and which will also reduce paperwork in local schools and improve program integrity.

Parents of preschool-age children face a big challenge of finding safe, affordable day care. This is especially so for low-income families. This bill extends and makes permanent meal assistance to day care centers in which at least 25 percent of enrolled children are low-income. USDA estimates that on an average day approximately 90,000 children will benefit from this meal assistance.

The bill also includes a number of important changes in the process to certify students as eligible for free or reduced-price school meals and to verify the accuracy of a small percentage of the applications for free and reduced-price school meals. These changes are designed to make sure that more certifications are completed correctly at the start of the school year. Improving program integrity has always been a duty that this committee has carried out on a bipartisan basis. Maintaining and improving program integrity is critical both to ensuring sound stewardship of taxpayer dollars and to guaranteeing that children who most need child nutrition benefits actually receive them.

One of the bill's program integrity measures allows schools to strengthen and simplify the verification process under which the income level of a sample of households must be documented. For example, for the first time, school districts will be able to use Medicaid data to verify household income so school districts won't have to duplicate verification efforts already undertaken in the Medicaid program, and families won't have to document income multiple times. I urge the Secretary, State agencies, and local educational agencies to take full advantage of this new option.

In addition, once a student is certified for free or reduced-price meals, that certification will be effective for a

full year. Those families that are selected for verification will be able to provide documentation for any point in time between the month prior to application and the time the income documentation is provided. Though the bill itself does not specify an exact time, the Secretary should not narrow the period and should issue guidance instructing local educational authorities to accept as income verification documentation any information pertaining to any point in time within the interval between the month prior to when the school meals application was completed and when the income documentation is provided.

The supplemental nutrition program for Women, Infants and Children, WIC, provides vouchers to eligible low-income families for specified food items. Recipients redeem these vouchers at local vendors. In recent years, a specialized type of vendor, known as WIC-only stores or supplemental foods vendors, has developed that accepts only WIC vouchers. These vendors do not compete for business on the basis of price, but rather on the service they provide their WIC clientele. This bill includes several important measures designed to contain WIC food costs. The committee report on this bill contains a good deal of information on WIC-only stores and on the provisions intended to address them. However, the bill language on WIC-only cost containment has changed somewhat, and additional clarification may be helpful here.

Although the legislative language offers States latitude to design vendor peer groups, competitive price criteria, and maximum reimbursement levels, each State must meet two important cost-containment goals unless exempted by the Secretary. First, each State must ensure that its aggregate WIC food costs are no higher if WIC participants choose to shop at WIC-only stores than if they shop at regular competitive stores. Second, each State must ensure that average prices, referred to as "average payments per voucher", in WIC-only stores are no higher than average prices in comparable competitive stores.

The bill allows the Secretary to exempt a State from carrying out requirements regarding the peer groups, competitive price criteria, and maximum reimbursement levels if the State does not authorize WIC-only stores or if the WIC-only stores in the State account for less than 5 percent of the State's total WIC food sales. If a State is exempt because the WIC-only stores in the State account for less than 5 percent of the State's total WIC food sales, the State is nonetheless required to ensure that its aggregate food costs are no higher if WIC participants choose to shop at WIC-only stores rather than at regular competitive stores.

Because WIC-only stores do not market items outside of the WIC program, the stores' earnings necessarily flow

from the WIC program. To ensure that WIC dollars are not spent on non-WIC items, the bill prohibits giveaways of incentive items or other free merchandise by WIC-only stores unless the store can demonstrate that the items or merchandise were obtained at no cost. Although an exemption for food or merchandise of nominal value has been added since the committee approved this bill, the intent of the bill remains to ban giveaways of the kind of items that are currently given away, such as diapers, strollers, bicycles, small kitchen appliances, other household products, and two-for-one offers on WIC food items. Food or merchandise of nominal value is meant to include items of lesser value than these items. In issuing guidance or regulations on this matter, the Secretary must ensure that even offering items of nominal value does not unnecessarily drive up costs in the WIC program.

This bill also includes important provisions on infant formula cost containment competitive bidding which will, I believe, ensure that the WIC program continues to benefit from the strength of the competitive marketplace and the infant formula rebates that enable so many children to participate in the WIC program.

I am pleased that this bill takes positive steps to enhance child nutrition and to address the epidemic of overweight and obesity in this country as well. Let there be no mistake, poor nutrition early in life lays the foundation for chronic disease and premature death later in life. According to the CDC, poor diet and physical inactivity will soon overtake smoking as the Nation's leading cause of death. In 2000, 400,000 deaths were associated with poor diet and physical inactivity.

This fiscal year the Federal Government will invest over \$8.3 billion in the school lunch and school breakfast programs, and this bill is a 5-year extension of this investment. The food served in these Federal school food programs meets Federal guidelines and provides balanced nutrition for the children who eat school meals. But in a majority of high schools and middle schools and an alarming number of elementary schools these school food programs and our taxpayer investment in them are undermined by an array of less nutritious food choices.

These foods that are sold in competition with the school meals are often high in fat, sugar and sodium. When kids choose these foods, they choose not to eat taxpayer supported, nutritionally balanced meals provided through the School Lunch and School Breakfast Programs. Not surprisingly, studies show that when kids get their lunches through vending machines at school their diets aren't nearly as healthy as when they obtain their meals through the school meal programs. In fact, among school-aged children only 2 percent meet the dietary recommendations for all food groups.

Research shows that a la carte items and vending machines displace student

consumption of more nutritious foods. In one study, students from schools that did not offer a la carte foods consumed half a serving more of fruit and a whole serving more of vegetables per day than did children in schools that did have a la carte programs. In another study, when kids gained access to foods other than through the School Lunch Program, they consumed 33 percent less fruit, 42 percent less vegetables, and 35 percent less milk.

Not surprisingly, poor diets contribute to childhood obesity and overweight children, with significant negative effects. Compared to regular-weight children, overweight children are more likely to have high levels of cholesterol, high blood pressure, high levels of insulin, and exhibit generally higher numbers of risk factors for cardiovascular disease. Between 50 and 80 percent of diabetes cases are associated with diet and sedentary lifestyles.

And it is not just about obesity. The lack of fruits, vegetables, and milk in our children's diets has tremendous ramifications for the health of kids and adults. Poor eating habits early in life lay the foundation for chronic disease and premature death at a later age. Cancer, heart disease, and osteoporosis are just a few of the many diseases associated with poor diet.

Because schools receive substantial revenue from the sale of junk food at school, some folks are concerned that schools will suffer financially if they replace junk food with healthier choices. I understand this concern, but I disagree with the premise. Many schools have stocked their vending machines and snack bars with healthy food, with no negative impact on revenue. Wide-open sales of unhealthy foods in schools hasn't always been the norm. Back in the 1970s, Congress gave the Secretary of Agriculture the authority to set nutrition guidelines to make sure our child nutrition programs work. Congress intended for that authority to extend to all food sales throughout the school and for the entire school day. And this is what the regulations put forth by USDA did.

However, the courts subsequently struck that authority down—wrongly, in my opinion. As a result, USDA regulations only apply to foods sold in the school cafeteria and during mealtime rather than to the entire school and school day. This has left us with this crazy situation in which, rather than getting a decent meal in the school cafeteria at lunch, kids can instead just go to the vending machines in the hall for a soft drink and junk food.

I believe that Congress should reinstate the Secretary of Agriculture's authority to set nutritional standards for foods available anywhere on school grounds at any time of the day. The Secretary would then determine, after public comment, how to use that authority.

This bill takes a different approach, but one that I believe holds great promise for improving the dietary

quality of foods sold in our Nation's schools.

First, it extends and expands the Fresh Fruit and Vegetable Program. Two years ago in the farm bill, we created a pilot program to provide free fresh and dried fruits and vegetables to children. The pilot covered 25 schools in each of 4 states and 7 schools on an Indian reservation. This program has been remarkably popular with the schools, but more importantly, with the students.

In a world in which grocery clerks may not know a radish from a rutabaga, it is encouraging to see elementary, middle school and high school students eating fruits and vegetables that they have never seen before and loving them.

This bill continues the fruit and vegetable program in the current states and expands it to 4 additional states and additional schools on Indian reservations. I would like to do more, but this is strong progress toward getting more fruits and vegetables in all schools across the Nation.

This bill also requires schools that participate in the National School Lunch or School Breakfast Programs to craft, with broad input from parents and others, plans that include goals for nutrition education, physical activity, and other activities to promote student wellness. The plans must also include nutrition guidelines for all foods sold in school.

This is not an attack on any particular type of food. Rather, school wellness policies, as required by this bill, pertain to healthy lifestyles more broadly and look at all foods in school, not just those in vending machines and snack bars. It does not mandate what foods can be offered or stipulate their content, but it does ask local schools to set standards that they believe are appropriate.

The bill also provides USDA with mandatory funds to help schools to establish their own local wellness policies. I wish that it provided more or this technical assistance, but it is a positive first step.

In my mind, these local wellness policies are a potentially revolutionary step towards improving our children's health. They provide real empowerment at the local school level. I look forward to seeing how schools endeavor to craft these policies and the effect that they have on school nutrition environments and children's health.

I also hope that, as schools work to craft their own wellness policies, they provide fertile ground for innovation and creative thinking. It is past time that all sectors of our society focus less on treating sickness, and focus more on promoting health and preventing obesity and chronic disease. This bill, in several ways, moves toward that goal and harnesses a potent force, our schools, in the efforts to be healthier as a country.

I thank my colleagues for their assistance and input on this important bill as well as for their support.

Mr. CRAPO. Mr. President, I ask unanimous consent that the Cochran amendment which is at the desk be agreed to, that the bill, as amended, be read a third time and passed, that the motions to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 3474) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The bill (S. 2507) was read the third time and passed, as follows:

S. 2507

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Child Nutrition and WIC Reauthorization Act of 2004".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; Table of contents.

#### TITLE I—AMENDMENTS TO RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT

- Sec. 101. Nutrition promotion.
- Sec. 102. Nutrition requirements.
- Sec. 103. Provision of information.
- Sec. 104. Direct certification.
- Sec. 105. Household applications.
- Sec. 106. Duration of eligibility for free or reduced price meals.
- Sec. 107. Runaway, homeless, and migrant youth.
- Sec. 108. Certification by local educational agencies.
- Sec. 109. Exclusion of military housing allowances.
- Sec. 110. Waiver of requirement for weighted averages for nutrient analysis.
- Sec. 111. Food safety.
- Sec. 112. Purchases of locally produced foods.
- Sec. 113. Special assistance.
- Sec. 114. Food and nutrition projects integrated with elementary school curricula.
- Sec. 115. Procurement training.
- Sec. 116. Summer food service program for children.
- Sec. 117. Commodity distribution program.
- Sec. 118. Notice of irradiated food products.
- Sec. 119. Child and adult care food program.
- Sec. 120. Fresh fruit and vegetable program.
- Sec. 121. Summer food service residential camp eligibility.
- Sec. 122. Access to local foods and school gardens.
- Sec. 123. Year-round services for eligible entities.
- Sec. 124. Free lunch and breakfast eligibility.
- Sec. 125. Training, technical assistance, and food service management institute.
- Sec. 126. Administrative error reduction.
- Sec. 127. Compliance and accountability.
- Sec. 128. Information clearinghouse.
- Sec. 129. Program evaluation.

#### TITLE II—AMENDMENTS TO CHILD NUTRITION ACT OF 1966

- Sec. 201. Severe need assistance.
- Sec. 202. State administrative expenses.
- Sec. 203. Special supplemental nutrition program for women, infants, and children.
- Sec. 204. Local wellness policy.
- Sec. 205. Team nutrition network.
- Sec. 206. Review of best practices in the breakfast program.

#### TITLE III—COMMODITY DISTRIBUTION PROGRAMS

Sec. 301. Commodity distribution programs.

#### TITLE IV—MISCELLANEOUS

Sec. 401. Sense of Congress regarding efforts to prevent and reduce childhood obesity.

#### TITLE V—IMPLEMENTATION

Sec. 501. Guidance and regulations.

Sec. 502. Effective dates.

#### TITLE I—AMENDMENTS TO RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT

##### SEC. 101. NUTRITION PROMOTION.

The Richard B. Russell National School Lunch Act is amended by inserting after section 4 (42 U.S.C. 1753) the following:

##### "SEC. 5. NUTRITION PROMOTION.

"(a) IN GENERAL.—Subject to the availability of funds made available under subsection (g), the Secretary shall make payments to State agencies for each fiscal year, in accordance with this section, to promote nutrition in food service programs under this Act and the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

"(b) TOTAL AMOUNT FOR EACH FISCAL YEAR.—The total amount of funds available for a fiscal year for payments under this section shall equal not more than the product obtained by multiplying—

"(1) ½ cent; by

"(2) the number of lunches reimbursed through food service programs under this Act during the second preceding fiscal year in schools, institutions, and service institutions that participate in the food service programs.

"(c) PAYMENTS TO STATES.—

"(1) ALLOCATION.—Subject to paragraph (2), from the amount of funds available under subsection (g) for a fiscal year, the Secretary shall allocate to each State agency an amount equal to the greater of—

"(A) a uniform base amount established by the Secretary; or

"(B) an amount determined by the Secretary, based on the ratio that—

"(i) the number of lunches reimbursed through food service programs under this Act in schools, institutions, and service institutions in the State that participate in the food service programs; bears to

"(ii) the number of lunches reimbursed through the food service programs in schools, institutions, and service institutions in all States that participate in the food service programs.

"(2) REDUCTIONS.—The Secretary shall reduce allocations to State agencies qualifying for an allocation under paragraph (1)(B), in a manner determined by the Secretary, to the extent necessary to ensure that the total amount of funds allocated under paragraph (1) is not greater than the amount appropriated under subsection (g).

"(d) USE OF PAYMENTS.—

"(1) USE BY STATE AGENCIES.—A State agency may reserve, to support dissemination and use of nutrition messages and material developed by the Secretary, up to—

"(A) 5 percent of the payment received by the State for a fiscal year under subsection (c); or

"(B) in the case of a small State (as determined by the Secretary), a higher percentage (as determined by the Secretary) of the payment.

"(2) DISBURSEMENT TO SCHOOLS AND INSTITUTIONS.—Subject to paragraph (3), the State agency shall disburse any remaining amount of the payment to school food authorities and institutions participating in food service programs described in subsection (a) to disseminate and use nutrition messages and material developed by the Secretary.

“(3) SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.—In addition to any amounts reserved under paragraph (1), in the case of the summer food service program for children established under section 13, the State agency may—

“(A) retain a portion of the funds made available under subsection (c) (as determined by the Secretary); and

“(B) use the funds, in connection with the program, to disseminate and use nutrition messages and material developed by the Secretary.

“(e) DOCUMENTATION.—A State agency, school food authority, and institution receiving funds under this section shall maintain documentation of nutrition promotion activities conducted under this section.

“(f) REALLOCATION.—The Secretary may reallocate, to carry out this section, any amounts made available to carry out this section that are not obligated or expended, as determined by the Secretary.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.”.

#### SEC. 102. NUTRITION REQUIREMENTS.

Section 9(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)) is amended by striking paragraph (2) and inserting the following:

“(2) FLUID MILK.—

“(A) IN GENERAL.—Lunches served by schools participating in the school lunch program under this Act—

“(i) shall offer students fluid milk in a variety of fat contents;

“(ii) may offer students flavored and unflavored fluid milk and lactose-free fluid milk; and

“(iii) shall provide a substitute for fluid milk for students whose disability restricts their diet, on receipt of a written statement from a licensed physician that identifies the disability that restricts the student's diet and that specifies the substitute for fluid milk.

“(B) SUBSTITUTES.—

“(i) STANDARDS FOR SUBSTITUTION.—A school may substitute for the fluid milk provided under subparagraph (A), a nondairy beverage that is nutritionally equivalent to fluid milk and meets nutritional standards established by the Secretary (which shall, among other requirements to be determined by the Secretary, include fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow's milk) for students who cannot consume fluid milk because of a medical or other special dietary need other than a disability described in subparagraph (A)(iii).

“(ii) NOTICE.—The substitutions may be made if the school notifies the State agency that the school is implementing a variation allowed under this subparagraph, and if the substitution is requested by written statement of a medical authority or by a student's parent or legal guardian that identifies the medical or other special dietary need that restricts the student's diet, except that the school shall not be required to provide beverages other than beverages the school has identified as acceptable substitutes.

“(iii) EXCESS EXPENSES BORNE BY SCHOOL FOOD AUTHORITY.—Expenses incurred in providing substitutions under this subparagraph that are in excess of expenses covered by reimbursements under this Act shall be paid by the school food authority.

“(C) RESTRICTIONS ON SALE OF MILK PROHIBITED.—A school that participates in the school lunch program under this Act shall not directly or indirectly restrict the sale or marketing of fluid milk products by the school (or by a person approved by the school) at any time or any place—

“(i) on the school premises; or

“(ii) at any school-sponsored event.”.

#### SEC. 103. PROVISION OF INFORMATION.

Section 9(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)) is amended by adding at the end the following:

“(4) PROVISION OF INFORMATION.—

“(A) GUIDANCE.—Prior to the beginning of the school year beginning July 2004, the Secretary shall issue guidance to States and school food authorities to increase the consumption of foods and food ingredients that are recommended for increased serving consumption in the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341).

“(B) RULES.—Not later than 2 years after the date of enactment of this paragraph, the Secretary shall promulgate rules, based on the most recent Dietary Guidelines for Americans, that reflect specific recommendations, expressed in serving recommendations, for increased consumption of foods and food ingredients offered in school nutrition programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).”.

#### SEC. 104. DIRECT CERTIFICATION.

(a) IN GENERAL.—Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) is amended—

(1) by redesignating paragraphs (3) through (7) as paragraphs (9) through (13), respectively; and

(2) in paragraph (2)—

(A) in subparagraph (B)—

(i) by striking “(B) Applications” and inserting the following:

“(B) APPLICATIONS AND DESCRIPTIVE MATERIAL.—

“(i) IN GENERAL.—Applications”;

(ii) in the second sentence, by striking “Such forms and descriptive material” and inserting the following:

“(ii) INCOME ELIGIBILITY GUIDELINES.—Forms and descriptive material distributed in accordance with clause (i)”; and

(iii) by adding at the end the following:

“(iii) CONTENTS OF DESCRIPTIVE MATERIAL.—

“(I) IN GENERAL.—Descriptive material distributed in accordance with clause (i) shall contain a notification that—

“(aa) participants in the programs listed in subclause (II) may be eligible for free or reduced price meals; and

“(bb) documentation may be requested for verification of eligibility for free or reduced price meals.

“(II) PROGRAMS.—The programs referred to in subclause (I)(aa) are—

“(aa) the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

“(bb) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

“(cc) the food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)); and

“(dd) a State program funded under the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).”;

(B) by striking “(C)(i)” and inserting “(3)”; and

(C) by striking clause (ii) of subparagraph (C) (as it existed before the amendment made by subparagraph (B)) and all that follows through the end of subparagraph (D) and inserting the following:

“(4) DIRECT CERTIFICATION FOR CHILDREN IN FOOD STAMP HOUSEHOLDS.—

“(A) IN GENERAL.—Subject to subparagraph (D), each State agency shall enter into an agreement with the State agency conducting eligibility determinations for the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

“(B) PROCEDURES.—Subject to paragraph (6), the agreement shall establish procedures under which a child who is a member of a household receiving assistance under the food stamp program shall be certified as eligible for free lunches under this Act and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

“(C) CERTIFICATION.—Subject to paragraph (6), under the agreement, the local educational agency conducting eligibility determinations for a school lunch program under this Act and a school breakfast program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall certify a child who is a member of a household receiving assistance under the food stamp program as eligible for free lunches under this Act and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

“(D) APPLICABILITY.—This paragraph applies to—

“(i) in the case of the school year beginning July 2006, a school district that had an enrollment of 25,000 students or more in the preceding school year;

“(ii) in the case of the school year beginning July 2007, a school district that had an enrollment of 10,000 students or more in the preceding school year; and

“(iii) in the case of the school year beginning July 2008 and each subsequent school year, each local educational agency.”.

(b) ADMINISTRATION.—

(1) IN GENERAL.—Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as amended by subsection (a)) is amended by inserting after paragraph (4) the following:

“(5) DISCRETIONARY CERTIFICATION.—

“(A) IN GENERAL.—Subject to paragraph (6), any local educational agency may certify any child as eligible for free lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of the status of the child as—

“(i) a member of a family that is receiving assistance under the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

“(ii) a homeless child or youth (defined as 1 of the individuals described in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)));

“(iii) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); or

“(iv) a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399)).”.

“(B) CHILDREN OF HOUSEHOLDS RECEIVING FOOD STAMPS.—Subject to paragraph (6), any local educational agency may certify any child as eligible for free lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of the status of the child as a member of a household that is receiving food stamps under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

“(6) USE OR DISCLOSURE OF INFORMATION.—

“(A) IN GENERAL.—The use or disclosure of any information obtained from an application for free or reduced price meals, or from a State or local agency referred to in paragraph (3)(F), (4), or (5), shall be limited to—

“(i) a person directly connected with the administration or enforcement of this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (including a regulation promulgated under either Act);

“(ii) a person directly connected with the administration or enforcement of—

“(I) a Federal education program;

“(II) a State health or education program administered by the State or local educational agency (other than a program carried out under title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq.; 42 U.S.C. 1397aa et seq.)); or

“(III) a Federal, State, or local means-tested nutrition program with eligibility standards comparable to the school lunch program under this Act;

“(iii)(I) the Comptroller General of the United States for audit and examination authorized by any other provision of law; and

“(II) notwithstanding any other provision of law, a Federal, State, or local law enforcement official for the purpose of investigating an alleged violation of any program covered by this paragraph or paragraph (3)(F), (4), or (5);

“(iv) a person directly connected with the administration of the State Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or the State children's health insurance program under title XXI of that Act (42 U.S.C. 1397aa et seq.) solely for the purposes of—

“(I) identifying children eligible for benefits under, and enrolling children in, those programs, except that this subclause shall apply only to the extent that the State and the local educational agency or school food authority so elect; and

“(II) verifying the eligibility of children for programs under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

“(v) a third party contractor described in paragraph (3)(G)(iv).

“(B) LIMITATION ON INFORMATION PROVIDED.—Information provided under clause (ii) or (v) of subparagraph (A) shall be limited to the income eligibility status of the child for whom application for free or reduced price meal benefits is made or for whom eligibility information is provided under paragraph (3)(F), (4), or (5), unless the consent of the parent or guardian of the child for whom application for benefits was made is obtained.

“(C) CRIMINAL PENALTY.—A person described in subparagraph (A) who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (including a regulation), any information obtained under this subsection shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

“(D) REQUIREMENTS FOR WAIVER OF CONFIDENTIALITY.—A State that elects to exercise the option described in subparagraph (A)(iv)(I) shall ensure that any local educational agency or school food authority acting in accordance with that option—

“(i) has a written agreement with 1 or more State or local agencies administering health programs for children under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq. and 1397aa et seq.) that requires the health agencies to use the information obtained under subparagraph (A) to seek to enroll children in those health programs; and

“(ii)(I) notifies each household, the information of which shall be disclosed under subparagraph (A), that the information disclosed will be used only to enroll children in

health programs referred to in subparagraph (A)(iv); and

“(II) provides each parent or guardian of a child in the household with an opportunity to elect not to have the information disclosed.

“(E) USE OF DISCLOSED INFORMATION.—A person to which information is disclosed under subparagraph (A)(iv)(I) shall use or disclose the information only as necessary for the purpose of enrolling children in health programs referred to in subparagraph (A)(iv).

“(7) FREE AND REDUCED PRICE POLICY STATEMENT.—

“(A) IN GENERAL.—After the initial submission, a local educational agency shall not be required to submit a free and reduced price policy statement to a State educational agency under this Act unless there is a substantive change in the free and reduced price policy of the local educational agency.

“(B) ROUTINE CHANGE.—A routine change in the policy of a local educational agency (such as an annual adjustment of the income eligibility guidelines for free and reduced price meals) shall not be sufficient cause for requiring the local educational agency to submit a policy statement.

“(8) COMMUNICATIONS.—

“(A) IN GENERAL.—Any communication with a household under this subsection or subsection (d) shall be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and legal guardians can understand.

“(B) ELECTRONIC AVAILABILITY.—In addition to the distribution of applications and descriptive material in paper form as provided for in this paragraph, the applications and material may be made available electronically via the Internet.”

(2) AGREEMENT FOR DIRECT CERTIFICATION AND COOPERATION.—Section 11 of the Food Stamp Act of 1977 (7 U.S.C. 2020) is amended by adding at the end the following:

“(u) AGREEMENT FOR DIRECT CERTIFICATION AND COOPERATION.—

“(1) IN GENERAL.—Each State agency shall enter into an agreement with the State agency administering the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

“(2) CONTENTS.—The agreement shall establish procedures that ensure that—

“(A) any child receiving benefits under this Act shall be certified as eligible for free lunches under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application; and

“(B) each State agency shall cooperate in carrying out paragraphs (3)(F) and (4) of section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)).”

(c) FUNDING.—

(1) IN GENERAL.—On October 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to assist States in carrying out the amendments contained in this section and the provisions of section 9(b)(3) of the Richard B. Russell National School Lunch Act (as amended by section 105(a)) \$9,000,000, to remain available until expended.

(2) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to assist States in carrying out the amendments made by this section and the provisions of section 9(b)(3) of the Richard B. Russell National School Lunch Act (as amended by section 105(a)) the funds transferred under paragraph (1), without further appropriation.

(d) CONFORMING AMENDMENTS.—

(1) Effective July 1, 2008, paragraph (5) of section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as added by subsection (b)(1)) is amended—

(A) by striking subparagraph (B);

(B) by striking “CERTIFICATION.—” and all that follows through “IN GENERAL.—” and inserting “CERTIFICATION.—”; and

(C) by redesignating clauses (i) through (iv) as subparagraphs (A) through (D), respectively, and indenting appropriately.

(2) Section 9 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758) (as amended by subsection (a)(1)) is amended—

(A) in subsection (b)(12)(B), by striking “paragraph (2)(C)” and inserting “this subsection”; and

(B) in the second sentence of subsection (d)(1), by striking “subsection (b)(2)(C)” and inserting “subsection (b)(3)(G)”.

(3) Section 11(e) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(e)) is amended in the first sentence by striking “section 9(b)(3)” and inserting “section 9(b)(9)”.

#### SEC. 105. HOUSEHOLD APPLICATIONS.

(a) IN GENERAL.—Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as amended by section 104(a)(2)(B)) is amended by striking paragraph (3) and inserting the following:

“(3) HOUSEHOLD APPLICATIONS.—

“(A) DEFINITION OF HOUSEHOLD APPLICATION.—In this paragraph, the term ‘household application’ means an application for a child of a household to receive free or reduced price school lunches under this Act, or free or reduced price school breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), for which an eligibility determination is made other than under paragraph (4) or (5).

“(B) ELIGIBILITY DETERMINATION.—

“(i) IN GENERAL.—An eligibility determination shall be made on the basis of a complete household application executed by an adult member of the household or in accordance with guidance issued by the Secretary.

“(ii) ELECTRONIC SIGNATURES AND APPLICATIONS.—A household application may be executed using an electronic signature if—

“(I) the application is submitted electronically; and

“(II) the electronic application filing system meets confidentiality standards established by the Secretary.

“(C) CHILDREN IN HOUSEHOLD.—

“(i) IN GENERAL.—The household application shall identify the names of each child in the household for whom meal benefits are requested.

“(ii) SEPARATE APPLICATIONS.—A State educational agency or local educational agency may not request a separate application for each child in the household that attends schools under the same local educational agency.

“(D) VERIFICATION OF SAMPLE.—

“(i) DEFINITIONS.—In this subparagraph:

“(I) ERROR PRONE APPLICATION.—The term ‘error prone application’ means an approved household application that—

“(aa) indicates monthly income that is within \$100, or an annual income that is within \$1,200, of the income eligibility limitation for free or reduced price meals; or

“(bb) in lieu of the criteria established under item (aa), meets criteria established by the Secretary.

“(II) NON-RESPONSE RATE.—The term ‘non-response rate’ means (in accordance with guidelines established by the Secretary) the percentage of approved household applications for which verification information has not been obtained by a local educational agency after attempted verification under subparagraphs (F) and (G).

“(ii) VERIFICATION OF SAMPLE.—Each school year, a local educational agency shall verify eligibility of the children in a sample of household applications approved for the school year by the local educational agency, as determined by the Secretary in accordance with this subsection.

“(iii) SAMPLE SIZE.—Except as otherwise provided in this paragraph, the sample for a local educational agency for a school year shall equal the lesser of—

“(I) 3 percent of all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; or

“(II) 3,000 error prone applications approved by the local educational agency for the school year, as of October 1 of the school year.

“(iv) ALTERNATIVE SAMPLE SIZE.—

“(I) IN GENERAL.—If the conditions described in subclause (IV) are met, the verification sample size for a local educational agency shall be the sample size described in subclause (II) or (III), as determined by the local educational agency.

“(II) 3,000/3 PERCENT OPTION.—The sample size described in this subclause shall be the lesser of 3,000, or 3 percent of, applications selected at random from applications approved by the local educational agency for the school year, as of October 1 of the school year.

“(III) 1,000/1 PERCENT PLUS OPTION.—

“(aa) IN GENERAL.—The sample size described in this subclause shall be the sum of—

“(AA) the lesser of 1,000, or 1 percent of, all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; and

“(BB) the lesser of 500, or ½ of 1 percent of, applications approved by the local educational agency for the school year, as of October 1 of the school year, that provide a case number (in lieu of income information) showing participation in a program described in item (bb) selected from those approved applications that provide a case number (in lieu of income information) verifying the participation.

“(bb) PROGRAMS.—The programs described in this item are—

“(AA) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

“(BB) the food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)); and

“(CC) a State program funded under the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995.

“(IV) CONDITIONS.—The conditions referred to in subclause (I) shall be met for a local educational agency for a school year if—

“(aa) the nonresponse rate for the local educational agency for the preceding school year is less than 20 percent; or

“(bb) the local educational agency has more than 20,000 children approved by application by the local educational agency as eligible for free or reduced price meals for the school year, as of October 1 of the school year, and—

“(AA) the nonresponse rate for the preceding school year is at least 10 percent below the nonresponse rate for the second preceding school year; or

“(BB) in the case of the school year beginning July 2005, the local educational agency attempts to verify all approved household applications selected for verification through use of public agency records from at least 2 of the programs or sources of information described in subparagraph (F)(i).

“(v) ADDITIONAL SELECTED APPLICATIONS.—A sample for a local educational agency for a school year under clauses (iii) and (iv)(III)(AA) shall include the number of additional randomly selected approved household applications that are required to comply with the sample size requirements in those clauses.

“(E) PRELIMINARY REVIEW.—

“(i) REVIEW FOR ACCURACY.—

“(I) IN GENERAL.—Prior to conducting any other verification activity for approved household applications selected for verification, the local educational agency shall ensure that the initial eligibility determination for each approved household application is reviewed for accuracy by an individual other than the individual making the initial eligibility determination, unless otherwise determined by the Secretary.

“(II) WAIVER.—The requirements of subclause (I) shall be waived for a local educational agency if the local educational agency is using a technology-based solution that demonstrates a high level of accuracy, to the satisfaction of the Secretary, in processing an initial eligibility determination in accordance with the income eligibility guidelines of the school lunch program.

“(ii) CORRECT ELIGIBILITY DETERMINATION.—If the review indicates that the initial eligibility determination is correct, the local educational agency shall verify the approved household application.

“(iii) INCORRECT ELIGIBILITY DETERMINATION.—If the review indicates that the initial eligibility determination is incorrect, the local educational agency shall (as determined by the Secretary)—

“(I) correct the eligibility status of the household;

“(II) notify the household of the change;

“(III) in any case in which the review indicates that the household is not eligible for free or reduced-price meals, notify the household of the reason for the ineligibility and that the household may reapply with income documentation for free or reduced-price meals; and

“(IV) in any case in which the review indicates that the household is eligible for free or reduced-price meals, verify the approved household application.

“(F) DIRECT VERIFICATION.—

“(i) IN GENERAL.—Subject to clauses (ii) and (iii), to verify eligibility for free or reduced price meals for approved household applications selected for verification, the local educational agency may (in accordance with criteria established by the Secretary) first obtain and use income and program participation information from a public agency administering—

“(I) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

“(II) the food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b));

“(III) the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

“(IV) the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); or

“(V) a similar income-tested program or other source of information, as determined by the Secretary.

“(ii) FREE MEALS.—Public agency records that may be obtained and used under clause (i) to verify eligibility for free meals for approved household applications selected for verification shall include the most recent available information (other than information reflecting program participation or income before the 180-day period ending on the date of application for free meals) that is relied on to administer—

“(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

“(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

“(aa) a State in which the income eligibility limit applied under section 1902(1)(2)(C) of that Act (42 U.S.C. 1396a(1)(2)(C)) is not more than 133 percent of the official poverty line described in section 1902(1)(2)(A) of that Act (42 U.S.C. 1396a(1)(2)(A)); or

“(bb) a State that otherwise identifies households that have income that is not more than 133 percent of the official poverty line described in section 1902(1)(2)(A) of that Act (42 U.S.C. 1396a(1)(2)(A)).

“(iii) REDUCED PRICE MEALS.—Public agency records that may be obtained and used under clause (i) to verify eligibility for reduced price meals for approved household applications selected for verification shall include the most recent available information (other than information reflecting program participation or income before the 180-day period ending on the date of application for reduced price meals) that is relied on to administer—

“(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

“(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

“(aa) a State in which the income eligibility limit applied under section 1902(1)(2)(C) of that Act (42 U.S.C. 1396a(1)(2)(C)) is not more than 185 percent of the official poverty line described in section 1902(1)(2)(A) of that Act (42 U.S.C. 1396a(1)(2)(A)); or

“(bb) a State that otherwise identifies households that have income that is not more than 185 percent of the official poverty line described in section 1902(1)(2)(A) of that Act (42 U.S.C. 1396a(1)(2)(A)).

“(iv) EVALUATION.—Not later than 3 years after the date of enactment of this subparagraph, the Secretary shall complete an evaluation of—

“(I) the effectiveness of direct verification carried out under this subparagraph in decreasing the portion of the verification sample that must be verified under subparagraph (G) while ensuring that adequate verification information is obtained; and

“(II) the feasibility of direct verification by State agencies and local educational agencies.

“(v) EXPANDED USE OF DIRECT VERIFICATION.—If the Secretary determines that direct verification significantly decreases the portion of the verification sample that must be verified under subparagraph (G), while ensuring that adequate verification information is obtained, and can be conducted by most State agencies and local educational agencies, the Secretary may require a State agency or local educational agency to implement direct verification through 1 or more of the programs described in clause (i), as determined by the Secretary, unless the State agency or local educational agency demonstrates (under criteria established by the Secretary) that the State agency or local educational agency lacks the capacity to conduct, or is unable to implement, direct verification.

“(G) HOUSEHOLD VERIFICATION.—



“(i) IN GENERAL.—If an approved household application is not verified through the use of public agency records, a local educational agency shall provide to the household written notice that—

“(I) the approved household application has been selected for verification; and

“(II) the household is required to submit verification information to confirm eligibility for free or reduced price meals.

“(ii) PHONE NUMBER.—The written notice in clause (i) shall include a toll-free phone number that parents and legal guardians in households selected for verification can call for assistance with the verification process.

“(iii) FOLLOWUP ACTIVITIES.—If a household does not respond to a verification request, a local educational agency shall make at least 1 attempt to obtain the necessary verification from the household in accordance with guidelines and regulations promulgated by the Secretary.

“(iv) CONTRACT AUTHORITY FOR SCHOOL FOOD AUTHORITIES.—A local educational agency may contract (under standards established by the Secretary) with a third party to assist the local educational agency in carrying out clause (iii).

“(H) VERIFICATION DEADLINE.—

“(i) GENERAL DEADLINE.—

“(I) IN GENERAL.—Subject to subclause (II), not later than November 15 of each school year, a local educational agency shall complete the verification activities required for the school year (including followup activities).

“(II) EXTENSION.—Under criteria established by the Secretary, a State may extend the deadline established under subclause (I) for a school year for a local educational agency to December 15 of the school year.

“(ii) ELIGIBILITY CHANGES.—Based on the verification activities, the local educational agency shall make appropriate modifications to the eligibility determinations made for household applications in accordance with criteria established by the Secretary.

“(I) LOCAL CONDITIONS.—In the case of a natural disaster, civil disorder, strike, or other local condition (as determined by the Secretary), the Secretary may substitute alternatives for—

“(i) the sample size and sample selection criteria established under subparagraph (D); and

“(ii) the verification deadline established under subparagraph (H).

“(J) INDIVIDUAL REVIEW.—In accordance with criteria established by the Secretary, the local educational agency may, on individual review—

“(i) decline to verify no more than 5 percent of approved household applications selected under subparagraph (D); and

“(ii) replace the approved household applications with other approved household applications to be verified.

“(K) FEASIBILITY STUDY.—

“(i) IN GENERAL.—The Secretary shall conduct a study of the feasibility of using computer technology (including data mining) to reduce—

“(I) overcertification errors in the school lunch program under this Act;

“(II) waste, fraud, and abuse in connection with this paragraph; and

“(III) errors, waste, fraud, and abuse in other nutrition programs, as determined to be appropriate by the Secretary.

“(ii) REPORT.—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

“(I) the results of the feasibility study conducted under this subsection;

“(II) how a computer system using technology described in clause (i) could be implemented;

“(III) a plan for implementation; and

“(IV) proposed legislation, if necessary, to implement the system.”.

(b) CONFORMING AMENDMENTS.—Section 1902(a)(7) of the Social Security Act (42 U.S.C. 1396a(a)(7)) is amended—

(1) by striking “connected with the” and inserting “connected with—

“(A) the”;

(2) by adding “and” after the semicolon; and

(3) by adding at the end the following:

“(B) at State option, the exchange of information necessary to verify the certification of eligibility of children for free or reduced price breakfasts under the Child Nutrition Act of 1966 and free or reduced price lunches under the Richard B. Russell National School Lunch Act, in accordance with section 9(b) of that Act, using data standards and formats established by the State agency”.

(c) EVALUATION FUNDING.—

(1) IN GENERAL.—On October 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to conduct the evaluation required by section 9(b)(3)(F)(iv) of the Richard B. Russell National School Lunch Act (as amended by subsection (a)) \$2,000,000, to remain available until expended.

(2) RECEIPT AND ACCEPTANCE.—The Secretary of Agriculture shall be entitled to receive, shall accept, and shall use to carry out this section the funds transferred under paragraph (1), without further appropriation.

#### SEC. 106. DURATION OF ELIGIBILITY FOR FREE OR REDUCED PRICE MEALS.

Paragraph (9) of section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as redesignated by section 104(a)(1)) is amended—

(1) by striking “(9) Any” and inserting the following:

“(9) ELIGIBILITY FOR FREE AND REDUCED PRICE LUNCHES.—

“(A) FREE LUNCHES.—Any”;

(2) by striking “Any” in the second sentence and inserting the following:

“(B) REDUCED PRICE LUNCHES.—

“(i) IN GENERAL.—Any”;

(3) by striking “The” in the last sentence and inserting the following:

“(ii) MAXIMUM PRICE.—The”;

(4) by adding at the end the following:

“(C) DURATION.—Except as otherwise specified in paragraph (3)(E), (3)(H)(ii), and section 11(a), eligibility for free or reduced price meals for any school year shall remain in effect—

“(i) beginning on the date of eligibility approval for the current school year; and

“(ii) ending on a date during the subsequent school year determined by the Secretary.”.

#### SEC. 107. RUNAWAY, HOMELESS, AND MIGRANT YOUTH.

(a) CATEGORICAL ELIGIBILITY FOR FREE LUNCHES AND BREAKFASTS.—Section 9(b)(12)(A) of the Richard B. Russell National School Lunch Act (as redesignated by section 104(a)(1) of this Act) is amended—

(1) in clause (ii), by striking “or” at the end;

(2) in clause (iii), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(iv) a homeless child or youth (defined as 1 of the individuals described in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2));

“(v) served by the runaway and homeless youth grant program established under the

Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); or

“(vi) a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399)).”.

(b) DOCUMENTATION.—Section 9(d)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(d)(2)) is amended—

(1) in subparagraph (B), by striking “or”;

(2) in subparagraph (C), by striking the period at the end and inserting a semicolon; and

(3) by inserting after subparagraph (C) the following:

“(D) documentation has been provided to the appropriate local educational agency showing that the child meets the criteria specified in clauses (iv) or (v) of subsection (b)(12)(A); or

“(E) documentation has been provided to the appropriate local educational agency showing the status of the child as a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399)).”.

#### SEC. 108. CERTIFICATION BY LOCAL EDUCATIONAL AGENCIES.

(a) CERTIFICATION BY LOCAL EDUCATIONAL AGENCY.—Section 9 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758) is amended—

(1) in the second sentence of subsection (b)(11) (as redesignated by section 104(a)(1)), by striking “Local school authorities” and inserting “Local educational agencies”;

(2) in subsection (d)(2)—

(A) by striking “local school food authority” each place it appears and inserting “local educational agency”; and

(B) in subparagraph (A), by striking “such authority” and inserting “the local educational agency”.

(b) DEFINITION OF LOCAL EDUCATIONAL AGENCY.—Section 12(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)) is amended—

(1) by redesignating paragraph (8) as paragraph (3) and moving the paragraph to appear after paragraph (2);

(2) by redesignating paragraphs (3) through (7) (as those paragraphs existed before the amendment made by paragraph (1)) as paragraphs (5) through (9), respectively; and

(3) by inserting after paragraph (3) (as redesignated by paragraph (1)) the following:

“(4) LOCAL EDUCATIONAL AGENCY.—

“(A) IN GENERAL.—The term ‘local educational agency’ has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

“(B) INCLUSION.—The term ‘local educational agency’ includes, in the case of a private nonprofit school, an appropriate entity determined by the Secretary.”.

(c) SCHOOL BREAKFAST PROGRAM.—Section 4(b)(1)(E) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(1)(E)) is amended by striking “school food authority” each place it appears and inserting “local educational agency”.

#### SEC. 109. EXCLUSION OF MILITARY HOUSING ALLOWANCES.

Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as amended by section 104(a)(1)) is amended in paragraph (13) by striking “For each of fiscal years 2002 and 2003 and through June 30, 2004, the” and inserting “The”.

#### SEC. 110. WAIVER OF REQUIREMENT FOR WEIGHTED AVERAGES FOR NUTRIENT ANALYSIS.

Section 9(f)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(5)) is amended by striking “September 30, 2003” and inserting “September 30, 2009”.

**SEC. 111. FOOD SAFETY.**

Section 9(h) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(h)) is amended—

(1) in the subsection heading, by striking “INSPECTIONS”;

(2) in paragraph (1)—

(A) by striking “Except as provided in paragraph (2), a” and inserting “A”;

(B) by striking “shall, at least once” and inserting: “shall—

“(A) at least twice”;

(C) by striking the period at the end and inserting a semicolon; and

(D) by adding at the end the following:

“(B) post in a publicly visible location a report on the most recent inspection conducted under subparagraph (A); and

“(C) on request, provide a copy of the report to a member of the public.”; and

(3) by striking paragraph (2) and inserting the following:

“(2) STATE AND LOCAL GOVERNMENT INSPECTIONS.—Nothing in paragraph (1) prevents any State or local government from adopting or enforcing any requirement for more frequent food safety inspections of schools.

“(3) AUDITS AND REPORTS BY STATES.—For each of fiscal years 2006 through 2009, each State shall annually—

“(A) audit food safety inspections of schools conducted under paragraphs (1) and (2); and

“(B) submit to the Secretary a report of the results of the audit.

“(4) AUDIT BY THE SECRETARY.—For each of fiscal years 2006 through 2009, the Secretary shall annually audit State reports of food safety inspections of schools submitted under paragraph (3).

“(5) SCHOOL FOOD SAFETY PROGRAM.—Each school food authority shall implement a school food safety program, in the preparation and service of each meal served to children, that complies with any hazard analysis and critical control point system established by the Secretary.”.

**SEC. 112. PURCHASES OF LOCALLY PRODUCED FOODS.**

Section 9(j)(2)(A) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(j)(2)(A)) is amended by striking “2007” and inserting “2009”.

**SEC. 113. SPECIAL ASSISTANCE.**

Section 11(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1)) is amended by inserting “or school district” after “school” each place it appears in subparagraphs (C) through (E) (other than as part of “school year”, “school years”, “school lunch”, “school breakfast”, and “4-school-year period”).

**SEC. 114. FOOD AND NUTRITION PROJECTS INTEGRATED WITH ELEMENTARY SCHOOL CURRICULA.**

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by striking subsection (m).

**SEC. 115. PROCUREMENT TRAINING.**

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) (as amended by section 114) is amended by inserting after subsection (l) the following:

“(m) PROCUREMENT TRAINING.—

“(1) IN GENERAL.—Subject to the availability of funds made available under paragraph (4), the Secretary shall provide technical assistance and training to States, State agencies, schools, and school food authorities in the procurement of goods and services for programs under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (other than section 17 of that Act (42 U.S.C. 1786)).

“(2) BUY AMERICAN TRAINING.—Activities carried out under paragraph (1) shall include technical assistance and training to ensure compliance with subsection (n).

“(3) PROCURING SAFE FOODS.—Activities carried out under paragraph (1) shall include technical assistance and training on procuring safe foods, including the use of model specifications for procuring safe foods.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$1,000,000 for each of fiscal years 2005 through 2009, to remain available until expended.”.

**SEC. 116. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.**

(a) SEAMLESS SUMMER OPTION.—Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) is amended by adding at the end the following:

“(8) SEAMLESS SUMMER OPTION.—Except as otherwise determined by the Secretary, a service institution that is a public or private nonprofit school food authority may provide summer or school vacation food service in accordance with applicable provisions of law governing the school lunch program established under this Act or the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).”.

(b) SEAMLESS SUMMER REIMBURSEMENTS.—Section 13(b)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(b)(1)) is amended by adding at the end the following:

“(D) SEAMLESS SUMMER REIMBURSEMENTS.—A service institution described in subsection (a)(8) shall be reimbursed for meals and meal supplements in accordance with the applicable provisions under this Act (other than subparagraphs (A), (B), and (C) of this paragraph and paragraph (4)) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), as determined by the Secretary.”.

(c) SUMMER FOOD SERVICE ELIGIBILITY CRITERIA.—Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) (as amended by subsection (a)) is amended by adding at the end the following—

“(9) EXEMPTION.—

“(A) IN GENERAL.—For each of calendar years 2005 and 2006 in rural areas of the State of Pennsylvania (as determined by the Secretary), the threshold for determining ‘areas in which poor economic conditions exist’ under paragraph (1)(C) shall be 40 percent.

“(B) EVALUATION.—

“(i) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service, shall evaluate the impact of the eligibility criteria described in subparagraph (A) as compared to the eligibility criteria described in paragraph (1)(C).

“(ii) IMPACT.—The evaluation shall assess the impact of the threshold in subparagraph (A) on—

“(I) the number of sponsors offering meals through the summer food service program;

“(II) the number of sites offering meals through the summer food service program;

“(III) the geographic location of the sites;

“(IV) services provided to eligible children; and

“(V) other factors determined by the Secretary.

“(iii) REPORT.—Not later than January 1, 2008, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this subparagraph.

“(iv) FUNDING.—

“(I) IN GENERAL.—On January 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subparagraph \$400,000, to remain available until expended.

“(II) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subparagraph the funds transferred under subclause (I), without further appropriation.”.

(d) SUMMER FOOD SERVICE RURAL TRANSPORTATION.—Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) (as amended by subsection (c)) is amended by adding at the end the following:

“(10) SUMMER FOOD SERVICE RURAL TRANSPORTATION.—

“(A) IN GENERAL.—The Secretary shall provide grants, through not more than 5 eligible State agencies selected by the Secretary, to not more than 60 eligible service institutions selected by the Secretary to increase participation at congregate feeding sites in the summer food service program for children authorized by this section through innovative approaches to limited transportation in rural areas.

“(B) ELIGIBILITY.—To be eligible to receive a grant under this paragraph—

“(i) a State agency shall submit an application to the Secretary, in such manner as the Secretary shall establish, and meet criteria established by the Secretary; and

“(ii) a service institution shall agree to the terms and conditions of the grant, as established by the Secretary.

“(C) DURATION.—A service institution that receives a grant under this paragraph may use the grant funds during the 3-fiscal year period beginning in fiscal year 2005.

“(D) REPORTS.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate—

“(i) not later than January 1, 2007, an interim report that describes—

“(I) the use of funds made available under this paragraph; and

“(II) any progress made by using funds from each grant provided under this paragraph; and

“(ii) not later than January 1, 2008, a final report that describes—

“(I) the use of funds made available under this paragraph; and

“(II) any progress made by using funds from each grant provided under this paragraph;

“(III) the impact of this paragraph on participation in the summer food service program for children authorized by this section; and

“(IV) any recommendations by the Secretary concerning the activities of the service institutions receiving grants under this paragraph.

“(E) FUNDING.—

“(i) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this paragraph—

“(I) on October 1, 2005, \$2,000,000; and

“(II) on October 1, 2006, and October 1, 2007, \$1,000,000.

“(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this paragraph the funds transferred under clause (i), without further appropriation.

“(iii) AVAILABILITY OF FUNDS.—Funds transferred under clause (i) shall remain available until expended.

“(iv) REALLOCATION.—The Secretary may reallocate any amounts made available to carry out this paragraph that are not obligated or expended, as determined by the Secretary.”.

(e) REAUTHORIZATION.—Section 13(q) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(q)) is amended by striking

"June 30, 2004" and inserting "September 30, 2009".

(f) SIMPLIFIED SUMMER FOOD PROGRAMS.—

(1) DEFINITION OF ELIGIBLE STATE.—Section 18(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)) is amended by striking paragraph (1) and inserting the following:

"(1) DEFINITION OF ELIGIBLE STATE.—In this subsection, the term 'eligible State' means—

"(A) a State participating in the program under this subsection as of May 1, 2004; and

"(B) a State in which (based on data available in April 2004)—

"(i) the percentage obtained by dividing—

"(I) the sum of—

"(aa) the average daily number of children attending the summer food service program in the State in July 2003; and

"(bb) the average daily number of children receiving free or reduced price meals under the school lunch program in the State in July 2003; by

"(II) the average daily number of children receiving free or reduced price meals under the school lunch program in the State in March 2003; is less than

"(ii) 66.67 percent of the percentage obtained by dividing—

"(I) the sum of—

"(aa) the average daily number of children attending the summer food service program in all States in July 2003; and

"(bb) the average daily number of children receiving free or reduced price meals under the school lunch program in all States in July 2003; by

"(II) the average daily number of children receiving free or reduced price meals under the school lunch program in all States in March 2003.".

(2) DURATION.—Section 18(f)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)(2)) is amended by striking "During the period beginning October 1, 2000, and ending June 30, 2004, the" and inserting "The".

(3) PRIVATE NONPROFIT ORGANIZATIONS.—Section 18(f)(3) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)(3)) is amended in subparagraphs (A) and (B) by striking "(other than a service institution described in section 13(a)(7))" both places it appears.

(4) REPORT.—Section 18(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)) is amended by striking paragraph (6) and inserting the following:

"(6) REPORT.—Not later than April 30, 2007, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes—

"(A) the evaluations completed by the Secretary under paragraph (5); and

"(B) any recommendations of the Secretary concerning the programs."

(5) CONFORMING AMENDMENTS.—Section 18(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)) is amended—

(A) by striking the subsection heading and inserting the following:

"(f) SIMPLIFIED SUMMER FOOD PROGRAMS.—";

(B) in paragraph (2)—

(i) by striking the paragraph heading and inserting the following:

"(2) PROGRAMS.—"; and

(ii) by striking "pilot project" and inserting "program";

(C) in subparagraph (A) and (B) of paragraph (3), by striking "pilot project" both places it appears and inserting "program"; and

(D) in paragraph (5)—

(i) in the paragraph heading by striking "PILOT PROJECTS" and inserting "PROGRAMS"; and

(ii) by striking "pilot project" each place it appears and inserting "program".

SEC. 117. COMMODITY DISTRIBUTION PROGRAM.

Section 14(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762a(a)) is amended by striking "during the period beginning July 1, 1974, and ending June 30, 2004,".

SEC. 118. NOTICE OF IRRADIATED FOOD PRODUCTS.

Section 14 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762a) is amended by adding at the end the following:

"(h) NOTICE OF IRRADIATED FOOD PRODUCTS.—

"(1) IN GENERAL.—The Secretary shall develop a policy and establish procedures for the purchase and distribution of irradiated food products in school meals programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

"(2) MINIMUM REQUIREMENTS.—The policy and procedures shall ensure, at a minimum, that—

"(A) irradiated food products are made available only at the request of States and school food authorities;

"(B) reimbursements to schools for irradiated food products are equal to reimbursements to schools for food products that are not irradiated;

"(C) States and school food authorities are provided factual information on the science and evidence regarding irradiation technology, including—

"(i) notice that irradiation is not a substitute for safe food handling techniques; and

"(ii) any other similar information determined by the Secretary to be necessary to promote food safety in school meals programs;

"(D) States and school food authorities are provided model procedures for providing to school food authorities, parents, and students—

"(i) factual information on the science and evidence regarding irradiation technology; and

"(ii) any other similar information determined by the Secretary to be necessary to promote food safety in school meals;

"(E) irradiated food products distributed to the Federal school meals program under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) are labeled with a symbol or other printed notice that—

"(i) indicates that the product was irradiated; and

"(ii) is prominently displayed in a clear and understandable format on the container;

"(F) irradiated food products are not comingling in containers with food products that are not irradiated; and

"(G) schools that offer irradiated food products are encouraged to offer alternatives to irradiated food products as part of the meal plan used by the schools."

SEC. 119. CHILD AND ADULT CARE FOOD PROGRAM.

(a) DEFINITION OF INSTITUTION.—

(1) IN GENERAL.—Section 17(a)(2)(B)(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(a)(2)(B)(i)) is amended by striking "during" and all that follows through "2004,".

(2) CONFORMING AMENDMENT.—Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) is amended by striking subsection (p).

(b) DURATION OF DETERMINATION AS TIER I FAMILY OR GROUP DAY CARE HOME.—Section 17(f)(3)(E)(iii) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(f)(3)(E)(iii)) is amended by striking "3 years" and inserting "5 years".

(c) AUDITS.—Section 17(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(i)) is amended by striking "(i) The" and inserting the following:

"(i) AUDITS.—

"(1) DISREGARDS.—

"(A) IN GENERAL.—Subject to subparagraph (B), in conducting management evaluations, reviews, or audits under this section, the Secretary or a State agency may disregard any overpayment to an institution for a fiscal year if the total overpayment to the institution for the fiscal year does not exceed an amount that is consistent with the disregards allowed in other programs under this Act and recognizes the cost of collecting small claims, as determined by the Secretary.

"(B) CRIMINAL OR FRAUD VIOLATIONS.—In carrying out this paragraph, the Secretary and a State agency shall not disregard any overpayment for which there is evidence of a violation of a criminal law or civil fraud law.

"(2) FUNDING.—The".

(d) DURATION OF AGREEMENTS.—Section 17(j) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(j)) is amended—

(1) by striking "(j) The" and inserting the following:

"(j) AGREEMENTS.—

"(1) IN GENERAL.—The"; and

(2) by adding at the end the following:

"(2) DURATION.—An agreement under paragraph (1) shall remain in effect until terminated by either party to the agreement."

(e) RURAL AREA ELIGIBILITY DETERMINATION FOR DAY CARE HOMES.—Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) (as amended by subsection (a)(2)) is amended by inserting after subsection (o) the following:

"(p) RURAL AREA ELIGIBILITY DETERMINATION FOR DAY CARE HOMES.—

"(1) DEFINITION OF SELECTED TIER I FAMILY OR GROUP DAY CARE HOME.—In this subsection, the term 'selected tier I family or group day care home' means a family or group day home that meets the definition of tier I family or group day care home under subclause (I) of subsection (f)(3)(A)(ii) except that items (aa) and (bb) of that subclause shall be applied by substituting '40 percent' for '50 percent'.

"(2) ELIGIBILITY.—For each of fiscal years 2006 and 2007, in rural areas of the State of Nebraska (as determined by the Secretary), the Secretary shall provide reimbursement to selected tier I family or group day care homes (as defined in paragraph (1)) under subsection (f)(3) in the same manner as tier I family or group day care homes (as defined in subsection (f)(3)(A)(ii)(I)).

"(3) EVALUATION.—

"(A) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service, shall evaluate the impact of the eligibility criteria described in paragraph (2) as compared to the eligibility criteria described in subsection (f)(3)(A)(ii)(I).

"(B) IMPACT.—The evaluation shall assess the impact of the change in eligibility requirements on—

"(i) the number of family or group day care homes offering meals under this section;

"(ii) the number of family or group day care homes offering meals under this section that are defined as tier I family or group day care homes as a result of paragraph (1) that otherwise would be defined as tier II family or group day care homes under subsection (f)(3)(A)(iii);

"(iii) the geographic location of the family or group day care homes;

"(iv) services provided to eligible children; and

"(v) other factors determined by the Secretary.

“(C) REPORT.—Not later than March 31, 2008, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this subsection.

“(D) FUNDING.—

“(i) IN GENERAL.—On October 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this paragraph \$400,000, to remain available until expended.

“(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this paragraph the funds transferred under clause (i), without further appropriation.”

(f) MANAGEMENT SUPPORT.—Section 17(q)(3) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(q)(3)) is amended by striking “1999 through 2003” and inserting “2005 and 2006”.

(g) AGE LIMITS.—Section 17(t)(5)(A)(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(t)(5)(A)(i)) is amended—

(1) in subclause (I)—

(A) by striking “12” and inserting “18”; and

(B) by inserting “or” after the semicolon;

(2) by striking subclause (II); and

(3) by redesignating subclause (III) as subclause (II).

(h) TECHNICAL AMENDMENTS.—Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) is amended—

(1) in subsection (a)(6)(B), by inserting “and adult” after “child”; and

(2) in subsection (t)(3), by striking “subsection (a)(1)” and inserting “subsection (a)(5)”.

(i) PAPERWORK REDUCTION.—The Secretary of Agriculture, in conjunction with States and participating institutions, shall examine the feasibility of reducing paperwork resulting from regulations and recordkeeping requirements for State agencies, family child care homes, child care centers, and sponsoring organizations participating in the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766).

(j) EARLY CHILD NUTRITION EDUCATION.—

(1) IN GENERAL.—Subject to the availability of funds made available under paragraph (6), for a period of 4 successive years, the Secretary of Agriculture shall award to 1 or more entities with expertise in designing and implementing health education programs for limited-English-proficient individuals 1 or more grants to enhance obesity prevention activities for child care centers and sponsoring organizations providing services to limited-English-proficient individuals through the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) in each of 4 States selected by the Secretary in accordance with paragraph (2).

(2) STATES.—The Secretary shall provide grants under this subsection in States that have experienced a growth in the limited-English-proficient population of the States of at least 100 percent between the years 1990 and 2000, as measured by the census.

(3) REQUIRED ACTIVITIES.—Activities carried out under paragraph (1) shall include—

(A) developing an interactive and comprehensive tool kit for use by lay health educators and training activities;

(B) conducting training and providing ongoing technical assistance for lay health educators; and

(C) establishing collaborations with child care centers and sponsoring organizations

participating in the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) to—

(i) identify limited-English-proficient children and families; and

(ii) enhance the capacity of the child care centers and sponsoring organizations to use appropriate obesity prevention strategies.

(4) EVALUATION.—Each grant recipient shall identify an institution of higher education to conduct an independent evaluation of the effectiveness of the grant.

(5) REPORT.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry and the Committee on Health, Education, Labor, and Pensions, of the Senate a report that includes—

(A) the evaluation completed by the institution of higher education under paragraph (4);

(B) the effectiveness of lay health educators in reducing childhood obesity; and

(C) any recommendations of the Secretary concerning the grants.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection \$250,000 for each of fiscal years 2005 through 2009.

#### SEC. 120. FRESH FRUIT AND VEGETABLE PROGRAM.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by striking subsection (g) and inserting the following:

“(g) FRESH FRUIT AND VEGETABLE PROGRAM.—

“(1) IN GENERAL.—For the school year beginning July 2004 and each subsequent school year, the Secretary shall carry out a program to make free fresh fruits and vegetables available, to the maximum extent practicable, to—

“(A) 25 elementary or secondary schools in each of the 4 States authorized to participate in the program under this subsection on May 1, 2004;

“(B) 25 elementary or secondary schools (as selected by the Secretary in accordance with paragraph (3)) in each of 4 States (including a State for which funds were allocated under the program described in paragraph (3)(B)(ii)) that are not participating in the program under this subsection on May 1, 2004; and

“(C) 25 elementary or secondary schools operated on 3 Indian reservations (including the reservation authorized to participate in the program under this subsection on May 1, 2004), as selected by the Secretary.

“(2) PROGRAM.—A school participating in the program shall make free fresh fruits and vegetables available to students throughout the school day in 1 or more areas designated by the school.

“(3) SELECTION OF SCHOOLS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), in selecting additional schools to participate in the program under paragraph (1)(B), the Secretary shall—

“(i) to the maximum extent practicable, ensure that the majority of schools selected are those in which not less than 50 percent of students are eligible for free or reduced price meals under this Act;

“(ii) solicit applications from interested schools that include—

“(I) information pertaining to the percentage of students enrolled in the school submitting the application who are eligible for free or reduced price school lunches under this Act;

“(II) a certification of support for participation in the program signed by the school food manager, the school principal, and the

district superintendent (or equivalent positions, as determined by the school); and

“(III) such other information as may be requested by the Secretary;

“(iii) for each application received, determine whether the application is from a school in which not less than 50 percent of students are eligible for free or reduced price meals under this Act; and

“(iv) give priority to schools that submit a plan for implementation of the program that includes a partnership with 1 or more entities that provide non-Federal resources (including entities representing the fruit and vegetable industry) for—

“(I) the acquisition, handling, promotion, or distribution of fresh and dried fruits and fresh vegetables; or

“(II) other support that contributes to the purposes of the program.

“(B) NONAPPLICABILITY TO EXISTING PARTICIPANTS.—Subparagraph (A) shall not apply to a school, State, or Indian reservation authorized—

“(i) to participate in the program on May 1, 2004; or

“(ii) to receive funding for free fruits and vegetables under funds provided for public health improvement under the heading ‘DISEASE CONTROL, RESEARCH, AND TRAINING’ under the heading ‘CENTERS FOR DISEASE CONTROL AND PREVENTION’ in title II of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004 (Division E of Public Law 108-199; 118 Stat. 238).

“(4) NOTICE OF AVAILABILITY.—To be eligible to participate in the program under this subsection, a school shall widely publicize within the school the availability of free fresh fruits and vegetables under the program.

“(5) REPORTS.—

“(A) INTERIM REPORTS.—Not later than September 30 of each of fiscal years 2005 through 2008, the Secretary, acting through the Administrator of the Food and Nutrition Service, shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an interim report that describes the activities carried out under this subsection during the fiscal year covered by the report.

“(B) FINAL REPORT.—Not later than December 31, 2008, the Secretary, acting through the Administrator of the Food and Nutrition Service, shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a final report that describes the results of the program under this subsection.

“(6) FUNDING.—

“(A) EXISTING FUNDS.—The Secretary shall use to carry out this subsection any funds that remain under this subsection on the day before the date of enactment of this subparagraph.

“(B) MANDATORY FUNDS.—

“(i) IN GENERAL.—On October 1, 2004, and on each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection \$9,000,000, to remain available until expended.

“(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds made available under this subparagraph, without further appropriation.

“(C) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts made available under subparagraphs (A) and (B), there are authorized to be appropriated such sums as

are necessary to expand the program carried out under this subsection.

“(D) REALLOCATION.—The Secretary may reallocate any amounts made available to carry out this subsection that are not obligated or expended, as determined by the Secretary.”.

#### SEC. 121. SUMMER FOOD SERVICE RESIDENTIAL CAMP ELIGIBILITY.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by adding at the end the following:

“(h) SUMMER FOOD SERVICE RESIDENTIAL CAMP ELIGIBILITY.—

“(1) IN GENERAL.—During the month after the date of enactment of this subsection through September, 2004, and the months of May through September, 2005, the Secretary shall modify eligibility criteria, at not more than 1 private nonprofit residential camp in each of not more than 2 States, as determined by the Secretary, for the purpose of identifying and evaluating alternative methods of determining the eligibility of residential private nonprofit camps to participate in the summer food service program for children established under section 13.

“(2) ELIGIBILITY.—To be eligible for the criteria modified under paragraph (1), a residential camp—

“(A) shall be a service institution (as defined in section 13(a)(1));

“(B) may not charge a fee to any child in residence at the camp; and

“(C) shall serve children who reside in an area in which poor economic conditions exist (as defined in section 13(a)(1)).

“(3) PAYMENTS.—

“(A) IN GENERAL.—Under this subsection, the Secretary shall provide reimbursement for meals served to all children at a residential camp at the payment rates specified in section 13(b)(1).

“(B) REIMBURSABLE MEALS.—A residential camp selected by the Secretary may receive reimbursement for not more than 3 meals, or 2 meals and 1 supplement, during each day of operation.

“(4) EVALUATION.—

“(A) INFORMATION FROM RESIDENTIAL CAMPS.—Not later than December 31, 2005, a residential camp selected under paragraph (1) shall report to the Secretary such information as is required by the Secretary concerning the requirements of this subsection.

“(B) REPORT TO CONGRESS.—Not later than March 31, 2006, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that evaluates the effect of this subsection on program participation and other factors, as determined by the Secretary.”.

#### SEC. 122. ACCESS TO LOCAL FOODS AND SCHOOL GARDENS.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) (as amended by section 121) is amended by adding at the end the following:

“(i) ACCESS TO LOCAL FOODS AND SCHOOL GARDENS.—

“(1) IN GENERAL.—The Secretary may provide assistance, through competitive matching grants and technical assistance, to schools and nonprofit entities for projects that—

“(A) improve access to local foods in schools and institutions participating in programs under this Act and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) through farm-to-cafeteria activities, including school gardens, that may include the acquisition of food and appropriate equipment and the provision of training and education;

“(B) are, at a minimum, designed to—

“(i) procure local foods from small- and medium-sized farms for school meals; and

“(ii) support school garden programs;

“(C) support nutrition education activities or curriculum planning that incorporates the participation of school children in farm-based agricultural education activities, that may include school gardens;

“(D) develop a sustained commitment to farm-to-cafeteria projects in the community by linking schools, State departments of agriculture, agricultural producers, parents, and other community stakeholders;

“(E) require \$100,000 or less in Federal contributions;

“(F) require a Federal share of costs not to exceed 75 percent;

“(G) provide matching support in the form of cash or in-kind contributions (including facilities, equipment, or services provided by State and local governments and private sources); and

“(H) cooperate in an evaluation carried out by the Secretary.

“(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection for each of fiscal years 2004 through 2009.”.

#### SEC. 123. YEAR-ROUND SERVICES FOR ELIGIBLE ENTITIES.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) (as amended by section 122) is amended by adding at the end the following:

“(j) YEAR-ROUND SERVICES FOR ELIGIBLE ENTITIES.—

“(1) IN GENERAL.—A service institution that is described in section 13(a)(6) (excluding a public school), or a private nonprofit organization described in section 13(a)(7), and that is located in the State of California may be reimbursed—

“(A) for up to 2 meals during each day of operation served—

“(i) during the months of May through September;

“(ii) in the case of a service institution that operates a food service program for children on school vacation, at anytime under a continuous school calendar; and

“(iii) in the case of a service institution that provides meal service at a nonschool site to children who are not in school for a period during the school year due to a natural disaster, building repair, court order, or similar case, at anytime during such a period; and

“(B) for a snack served during each day of operation after school hours, weekends, and school holidays during the regular school calendar.

“(2) PAYMENTS.—The service institution shall be reimbursed consistent with section 13(b)(1).

“(3) ADMINISTRATION.—To receive reimbursement under this subsection, a service institution shall comply with section 13, other than subsections (b)(2) and (c)(1) of that section.

“(4) EVALUATION.—Not later than September 30, 2007, the State agency shall submit to the Secretary a report on the effect of this subsection on participation in the summer food service program for children established under section 13.

“(5) FUNDING.—The Secretary shall provide to the State of California such sums as are necessary to carry out this subsection for each of fiscal years 2005 through 2009.”.

#### SEC. 124. FREE LUNCH AND BREAKFAST ELIGIBILITY.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) (as amended by section 123) is amended by adding at the end the following:

“(k) FREE LUNCH AND BREAKFAST ELIGIBILITY.—

“(1) IN GENERAL.—Subject to the availability of funds under paragraph (4), the Sec-

retary shall expand the service of free lunches and breakfasts provided at schools participating in the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) in all or part of 5 States selected by the Secretary (of which at least 1 shall be a largely rural State with a significant Native American population).

“(2) INCOME ELIGIBILITY.—The income guidelines for determining eligibility for free lunches or breakfasts under this subsection shall be 185 percent of the applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 9(b)(1)(B).

“(3) EVALUATION.—

“(A) IN GENERAL.—Not later than 3 years after the implementation of this subsection, the Secretary shall conduct an evaluation to assess the impact of the changed income eligibility guidelines by comparing the school food authorities operating under this subsection to school food authorities not operating under this subsection.

“(B) IMPACT ASSESSMENT.—

“(i) CHILDREN.—The evaluation shall assess the impact of this subsection separately on—

“(I) children in households with incomes less than 130 percent of the applicable family income levels contained in the nonfarm poverty income guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 9(b)(1)(B); and

“(II) children in households with incomes greater than 130 percent and not greater than 185 percent of the applicable family income levels contained in the nonfarm poverty income guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 9(b)(1)(B).

“(ii) FACTORS.—The evaluation shall assess the impact of this subsection on—

“(I) certification and participation rates in the school lunch and breakfast programs;

“(II) rates of lunch- and breakfast-skipping;

“(III) academic achievement;

“(IV) the allocation of funds authorized in title I of the Elementary and Secondary Education Act (20 U.S.C. 6301) to local educational agencies and public schools; and

“(V) other factors determined by the Secretary.

“(C) COST ASSESSMENT.—The evaluation shall assess the increased costs associated with providing additional free, reduced price, or paid meals in the school food authorities operating under this subsection.

“(D) REPORT.—On completion of the evaluation, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this paragraph.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.”.

#### SEC. 125. TRAINING, TECHNICAL ASSISTANCE, AND FOOD SERVICE MANAGEMENT INSTITUTE.

(a) IN GENERAL.—Section 21(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b-1(a)(1)) is amended by striking “activities and” and all that follows and inserting “activities and provide—

“(A) training and technical assistance to improve the skills of individuals employed in—

“(i) food service programs carried out with assistance under this Act and, to the maximum extent practicable, using individuals who administer exemplary local food service programs in the State;

“(ii) school breakfast programs carried out with assistance under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

“(iii) as appropriate, other federally assisted feeding programs; and

“(B) assistance, on a competitive basis, to State agencies for the purpose of aiding schools and school food authorities with at least 50 percent of enrolled children certified to receive free or reduced price meals (and, if there are any remaining funds, other schools and school food authorities) in meeting the cost of acquiring or upgrading technology and information management systems for use in food service programs carried out under this Act and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), if the school or school food authority submits to the State agency an infrastructure development plan that—

“(i) addresses the cost savings and improvements in program integrity and operations that would result from the use of new or upgraded technology;

“(ii) ensures that there is not any overt identification of any child by special tokens or tickets, announced or published list of names, or by any other means;

“(iii) provides for processing and verifying applications for free and reduced price school meals;

“(iv) integrates menu planning, production, and serving data to monitor compliance with section 9(f)(1); and

“(v) establishes compatibility with statewide reporting systems;

“(C) assistance, on a competitive basis, to State agencies with low proportions of schools or students that—

“(i) participate in the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

“(ii) demonstrate the greatest need, for the purpose of aiding schools in meeting costs associated with initiating or expanding a school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), including outreach and informational activities; and”.

(b) DUTIES OF FOOD SERVICE MANAGEMENT INSTITUTE.—Section 21(c)(2)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b-1(c)(2)(B)) is amended—

(1) by striking clauses (vi) and (vii) and inserting the following:

“(vi) safety, including food handling, hazard analysis and critical control point plan implementation, emergency readiness, responding to a food recall, and food biosecurity training;”; and

(2) by redesignating clauses (viii) through (x) as clauses (vii) through (ix), respectively.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) TRAINING ACTIVITIES AND TECHNICAL ASSISTANCE.—Section 21(e)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b-1(e)(1)) is amended by striking “2003” and inserting “2009”.

(2) FOOD SERVICE MANAGEMENT INSTITUTE.—Section 21(e)(2)(A) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b-1(e)(2)(A)) is amended in the first sentence—

(A) by striking “provide to the Secretary” and all that follows through “1998, and” and inserting “provide to the Secretary”; and

(B) by striking “1999 and” and inserting “2004 and \$4,000,000 for fiscal year 2005”.

#### SEC. 126. ADMINISTRATIVE ERROR REDUCTION.

(a) FEDERAL SUPPORT FOR TRAINING AND TECHNICAL ASSISTANCE.—Section 21 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b-1) is amended by adding at the end the following:

“(f) ADMINISTRATIVE TRAINING AND TECHNICAL ASSISTANCE MATERIAL.—In collaboration with State educational agencies, local educational agencies, and school food authorities of varying sizes, the Secretary shall develop and distribute training and technical assistance material relating to the administration of school meals programs that are representative of the best management and administrative practices.

“(g) FEDERAL ADMINISTRATIVE SUPPORT.—

“(1) FUNDING.—

“(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection—

“(i) on October 1, 2004, and October 1, 2005, \$3,000,000; and

“(ii) on October 1, 2006, October 1, 2007, and October 1, 2008, \$2,000,000.

“(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

“(C) AVAILABILITY OF FUNDS.—Funds transferred under subparagraph (A) shall remain available until expended.

“(2) USE OF FUNDS.—The Secretary may use funds provided under this subsection—

“(A) to provide training and technical assistance and material related to improving program integrity and administrative accuracy in school meals programs; and

“(B) to assist State educational agencies in reviewing the administrative practices of local educational agencies, to the extent determined by the Secretary.”.

(b) SELECTED ADMINISTRATIVE REVIEWS.—

(1) IN GENERAL.—Section 22(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(b)) is amended by adding at the end the following:

“(3) ADDITIONAL REVIEW REQUIREMENT FOR SELECTED LOCAL EDUCATIONAL AGENCIES.—

“(A) DEFINITION OF SELECTED LOCAL EDUCATIONAL AGENCIES.—In this paragraph, the term ‘selected local educational agency’ means a local educational agency that has a demonstrated high level of, or a high risk for, administrative error, as determined by the Secretary.

“(B) ADDITIONAL ADMINISTRATIVE REVIEW.—In addition to any review required by subsection (a) or paragraph (1), each State educational agency shall conduct an administrative review of each selected local educational agency during the review cycle established under subsection (a).

“(C) SCOPE OF REVIEW.—In carrying out a review under subparagraph (B), a State educational agency shall only review the administrative processes of a selected local educational agency, including application, certification, verification, meal counting, and meal claiming procedures.

“(D) RESULTS OF REVIEW.—If the State educational agency determines (on the basis of a review conducted under subparagraph (B)) that a selected local educational agency fails to meet performance criteria established by the Secretary, the State educational agency shall—

“(i) require the selected local educational agency to develop and carry out an approved plan of corrective action;

“(ii) except to the extent technical assistance is provided directly by the Secretary, provide technical assistance to assist the selected local educational agency in carrying out the corrective action plan; and

“(iii) conduct a followup review of the selected local educational agency under standards established by the Secretary.

“(4) RETAINING FUNDS AFTER ADMINISTRATIVE REVIEWS.—

“(A) IN GENERAL.—Subject to subparagraphs (B) and (C), if the local educational agency fails to meet administrative performance criteria established by the Secretary in both an initial review and a followup review under paragraph (1) or (3) or subsection (a), the Secretary may require the State educational agency to retain funds that would otherwise be paid to the local educational agency for school meals programs under procedures prescribed by the Secretary.

“(B) AMOUNT.—The amount of funds retained under subparagraph (A) shall equal the value of any overpayment made to the local educational agency or school food authority as a result of an erroneous claim during the time period described in subparagraph (C).

“(C) TIME PERIOD.—The period for determining the value of any overpayment under subparagraph (B) shall be the period—

“(i) beginning on the date the erroneous claim was made; and

“(ii) ending on the earlier of the date the erroneous claim is corrected or—

“(I) in the case of the first followup review conducted by the State educational agency of the local educational agency under this section after July 1, 2005, the date that is 60 days after the beginning of the period under clause (i); or

“(II) in the case of any subsequent followup review conducted by the State educational agency of the local educational agency under this section, the date that is 90 days after the beginning of the period under clause (i).

“(5) USE OF RETAINED FUNDS.—

“(A) IN GENERAL.—Subject to subparagraph (B), funds retained under paragraph (4) shall—

“(i) be returned to the Secretary, and may be used—

“(I) to provide training and technical assistance related to administrative practices designed to improve program integrity and administrative accuracy in school meals programs to State educational agencies and, to the extent determined by the Secretary, to local educational agencies and school food authorities;

“(II) to assist State educational agencies in reviewing the administrative practices of local educational agencies in carrying out school meals programs; and

“(III) to carry out section 21(f); or

“(ii) be credited to the child nutrition programs appropriation account.

“(B) STATE SHARE.—A State educational agency may retain not more than 25 percent of an amount recovered under paragraph (4), to carry out school meals program integrity initiatives to assist local educational agencies and school food authorities that have repeatedly failed, as determined by the Secretary, to meet administrative performance criteria.

“(C) REQUIREMENT.—To be eligible to retain funds under subparagraph (B), a State educational agency shall—

“(i) submit to the Secretary a plan describing how the State educational agency will use the funds to improve school meals program integrity, including measures to give priority to local educational agencies from which funds were retained under paragraph (4);

“(ii) consider using individuals who administer exemplary local food service programs in the provision of training and technical assistance; and

“(iii) obtain the approval of the Secretary for the plan.”.

(2) INTERPRETATION.—Nothing in the amendment made by paragraph (1) affects the requirements for fiscal actions as described in the regulations issued pursuant to



section 22(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(a)).

(c) **TRAINING AND TECHNICAL ASSISTANCE.**—Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) is amended—

(1) in subsection (e)—

(A) by striking “(e) Each” and inserting the following:

“(e) **PLANS FOR USE OF ADMINISTRATIVE EXPENSE FUNDS.**—

“(1) **IN GENERAL.**—Each”; and

(B) by striking “After submitting” and all that follows through “change in the plan.” and inserting the following:

“(2) **UPDATES AND INFORMATION MANAGEMENT SYSTEMS.**—

“(A) **IN GENERAL.**—After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.

“(B) **PLAN CONTENTS.**—Each State plan shall, at a minimum, include a description of how technology and information management systems will be used to improve program integrity by—

“(i) monitoring the nutrient content of meals served;

“(ii) training local educational agencies, school food authorities, and schools in how to use technology and information management systems (including verifying eligibility for free or reduced price meals using program participation or income data gathered by State or local agencies); and

“(iii) using electronic data to establish benchmarks to compare and monitor program integrity, program participation, and financial data.

“(3) **TRAINING AND TECHNICAL ASSISTANCE.**—Each State shall submit to the Secretary for approval a plan describing the manner in which the State intends to implement subsection (g) and section 22(b)(3) of the Richard B. Russell National School Lunch Act.”;

(2) by redesignating subsection (g) as subsection (j); and

(3) by inserting after subsection (f) the following:

“(g) **STATE TRAINING.**—

“(1) **IN GENERAL.**—At least annually, each State shall provide training in administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures) to local educational agency and school food authority administrative personnel and other appropriate personnel, with emphasis on the requirements established by the Child Nutrition and WIC Reauthorization Act of 2004 and the amendments made by that Act.

“(2) **FEDERAL ROLE.**—The Secretary shall—

“(A) provide training and technical assistance to a State; or

“(B) at the option of the Secretary, directly provide training and technical assistance described in paragraph (1).

“(3) **REQUIRED PARTICIPATION.**—In accordance with procedures established by the Secretary, each local educational agency or school food authority shall ensure that an individual conducting or overseeing administrative procedures described in paragraph (1) receives training at least annually, unless determined otherwise by the Secretary.

“(h) **FUNDING FOR TRAINING AND ADMINISTRATIVE REVIEWS.**—

“(1) **FUNDING.**—

“(A) **IN GENERAL.**—On October 1, 2004, and on each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection \$4,000,000, to remain available until expended.

“(B) **RECEIPT AND ACCEPTANCE.**—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this sub-

section the funds transferred under subparagraph (A), without further appropriation.

“(2) **USE OF FUNDS.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), the Secretary shall use funds provided under this subsection to assist States in carrying out subsection (g) and administrative reviews of selected local educational agencies carried out under section 22 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c).

“(B) **EXCEPTION.**—The Secretary may retain a portion of the amount provided to cover costs of activities carried out by the Secretary in lieu of the State.

“(3) **ALLOCATION.**—The Secretary shall allocate funds provided under this subsection to States based on the number of local educational agencies that have demonstrated a high level of, or a high risk for, administrative error, as determined by the Secretary, taking into account the requirements established by the Child Nutrition and WIC Reauthorization Act of 2004 and the amendments made by that Act.

“(4) **REALLOCATION.**—The Secretary may reallocate, to carry out this section, any amounts made available to carry out this subsection that are not obligated or expended, as determined by the Secretary.”.

**SEC. 127. COMPLIANCE AND ACCOUNTABILITY.**

Section 22(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(d)) is amended by striking “\$3,000,000 for each of the fiscal years 1994 through 2003” and inserting “\$6,000,000 for each of fiscal years 2004 through 2009”.

**SEC. 128. INFORMATION CLEARINGHOUSE.**

Section 26(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769g(d)) is amended in the first sentence—

(1) by striking “1998, and” and inserting “1998,”; and

(2) by striking “through 2003” and inserting “through 2004, and \$250,000 for each of fiscal years 2005 through 2009”.

**SEC. 129. PROGRAM EVALUATION.**

The Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) is amended by adding at the end the following:

“**SEC. 28. PROGRAM EVALUATION.**

“(a) **PERFORMANCE ASSESSMENTS.**—

“(1) **IN GENERAL.**—Subject to the availability of funds made available under paragraph (3), the Secretary, acting through the Administrator of the Food and Nutrition Service, may conduct annual national performance assessments of the meal programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

“(2) **COMPONENTS.**—In conducting an assessment, the Secretary may assess—

“(A) the cost of producing meals and meal supplements under the programs described in paragraph (1); and

“(B) the nutrient profile of meals, and status of menu planning practices, under the programs.

“(3) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this subsection \$5,000,000 for fiscal year 2004 and each subsequent fiscal year.

“(b) **CERTIFICATION IMPROVEMENTS.**—

“(1) **IN GENERAL.**—Subject to the availability of funds made available under paragraph (5), the Secretary, acting through the Administrator of the Food and Nutrition Service, shall conduct a study of the feasibility of improving the certification process used for the school lunch program established under this Act.

“(2) **PILOT PROJECTS.**—In carrying out this subsection, the Secretary may conduct pilot projects to improve the certification process used for the school lunch program.

“(3) **COMPONENTS.**—In carrying out this subsection, the Secretary shall examine the use of—

“(A) other income reporting systems;

“(B) an integrated benefit eligibility determination process managed by a single agency;

“(C) income or program participation data gathered by State or local agencies; and

“(D) other options determined by the Secretary.

“(4) **WAIVERS.**—

“(A) **IN GENERAL.**—Subject to subparagraph (B), the Secretary may waive such provisions of this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) as are necessary to carry out this subsection.

“(B) **PROVISIONS.**—The protections of section 9(b)(6) shall apply to any study or pilot project carried out under this subsection.

“(5) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this subsection such sums as are necessary.”.

## TITLE II—AMENDMENTS TO CHILD NUTRITION ACT OF 1966

### SEC. 201. SEVERE NEED ASSISTANCE.

Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) is amended by striking subsection (d) and inserting the following:

“(d) **SEVERE NEED ASSISTANCE.**—

“(1) **IN GENERAL.**—Each State educational agency shall provide additional assistance to schools in severe need, which shall include only those schools (having a breakfast program or desiring to initiate a breakfast program) in which—

“(A) during the most recent second preceding school year for which lunches were served, 40 percent or more of the lunches served to students at the school were served free or at a reduced price; or

“(B) in the case of a school in which lunches were not served during the most recent second preceding school year, the Secretary otherwise determines that the requirements of subparagraph (A) would have been met.

“(2) **ADDITIONAL ASSISTANCE.**—A school, on the submission of appropriate documentation about the need circumstances in that school and the eligibility of the school for additional assistance, shall be entitled to receive the meal reimbursement rate specified in subsection (b)(2).”.

### SEC. 202. STATE ADMINISTRATIVE EXPENSES.

(a) **MINIMUM STATE ADMINISTRATIVE EXPENSE GRANTS.**—Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) is amended—

(1) by striking the section heading and all that follows through “(a)(1) Each” and inserting the following:

“**SEC. 7. STATE ADMINISTRATIVE EXPENSES.**

“(a) **AMOUNT AND ALLOCATION OF FUNDS.**—

“(1) **AMOUNT AVAILABLE.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), each”;

(2) in subsection (a)—

(A) in paragraph (1)—

(i) by inserting after the first sentence the following:

“(B) **MINIMUM AMOUNT.**—In the case of each of fiscal years 2005 through 2007, the Secretary shall make available to each State for administrative costs not less than the initial allocation made to the State under this subsection for fiscal year 2004.”;

(ii) by striking “The Secretary” and inserting the following:

“(C) **ALLOCATION.**—The Secretary”; and

(iii) by striking the last sentence; and

(B) in paragraph (2)—

(i) by striking “(2) The” and inserting the following:

“(2) **EXPENSE GRANTS.**—

“(A) **IN GENERAL.**—Subject to subparagraph (B), the”;

(ii) in the second sentence—

(I) by striking “In no case” and inserting the following:

“(B) MINIMUM AMOUNT.—

“(i) IN GENERAL.—In no case”;

(II) by striking “this subsection” and inserting “this paragraph”; and

(III) by striking “\$100,000” and inserting “\$200,000 (as adjusted under clause (ii))”; and

(iii) by adding at the end the following:

“(ii) ADJUSTMENT.—On October 1, 2008, and each October 1 thereafter, the minimum dollar amount for a fiscal year specified in clause (i) shall be adjusted to reflect the percentage change between—

“(I) the value of the index for State and local government purchases, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

“(II) the value of that index for the 12-month period ending June 30 of the preceding fiscal year.”.

(b) TECHNOLOGY INFRASTRUCTURE IMPROVEMENT.—Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) is amended by inserting after subsection (h) (as added by section 126(c)(3)) the following:

“(i) TECHNOLOGY INFRASTRUCTURE IMPROVEMENT.—

“(1) IN GENERAL.—Each State shall submit to the Secretary, for approval by the Secretary, an amendment to the plan required by subsection (e) that describes the manner in which funds provided under this section will be used for technology and information management systems.

“(2) REQUIREMENTS.—The amendment shall, at a minimum, describe the manner in which the State will improve program integrity by—

“(A) monitoring the nutrient content of meals served;

“(B) providing training to local educational agencies, school food authorities, and schools on the use of technology and information management systems for activities including—

“(i) menu planning;

“(ii) collection of point-of-sale data; and

“(iii) the processing of applications for free and reduced price meals; and

“(C) using electronic data to establish benchmarks to compare and monitor program integrity, program participation, and financial data across schools and school food authorities.

“(3) TECHNOLOGY INFRASTRUCTURE GRANTS.—

“(A) IN GENERAL.—Subject to the availability of funds made available under paragraph (4) to carry out this paragraph, the Secretary shall, on a competitive basis, provide funds to States to be used to provide grants to local educational agencies, school food authorities, and schools to defray the cost of purchasing or upgrading technology and information management systems for use in programs authorized by this Act (other than section 17) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

“(B) INFRASTRUCTURE DEVELOPMENT PLAN.—To be eligible to receive a grant under this paragraph, a school or school food authority shall submit to the State a plan to purchase or upgrade technology and information management systems that addresses potential cost savings and methods to improve program integrity, including—

“(i) processing and verification of applications for free and reduced price meals;

“(ii) integration of menu planning, production, and serving data to monitor compliance with section 9(f)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(1)); and

“(iii) compatibility with statewide reporting systems.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2005 through 2009, to remain available until expended.”.

(c) REAUTHORIZATION.—Subsection (j) of section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) (as redesignated by section 126(c)(2)) is amended by striking “2003” and inserting “2009”.

#### SEC. 203. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

(a) DEFINITIONS.—

(1) NUTRITION EDUCATION.—Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended by striking paragraph (7) and inserting the following:

“(7) NUTRITION EDUCATION.—The term ‘nutrition education’ means individual and group sessions and the provision of material that are designed to improve health status and achieve positive change in dietary and physical activity habits, and that emphasize the relationship between nutrition, physical activity, and health, all in keeping with the personal and cultural preferences of the individual.”.

(2) SUPPLEMENTAL FOODS.—Section 17(b)(14) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(14)) is amended in the first sentence by inserting after “children” the following: “and foods that promote the health of the population served by the program authorized by this section, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns”.

(3) OTHER TERMS.—Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended by adding at the end the following:

“(22) PRIMARY CONTRACT INFANT FORMULA.—The term ‘primary contract infant formula’ means the specific infant formula for which manufacturers submit a bid to a State agency in response to a rebate solicitation under this section and for which a contract is awarded by the State agency as a result of that bid.

“(23) STATE ALLIANCE.—The term ‘State alliance’ means 2 or more State agencies that join together for the purpose of procuring infant formula under the program by soliciting competitive bids for infant formula.”.

(b) ELIGIBILITY.—

(1) CERTIFICATION PERIOD.—Section 17(d)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)) is amended—

(A) by striking “(3)(A) Persons” and inserting the following:

“(3) CERTIFICATION.—

“(A) PROCEDURES.—

“(i) IN GENERAL.—Subject to clause (ii), a person”; and

(B) by adding at the end of subparagraph (A) the following:

“(ii) BREASTFEEDING WOMEN.—A State may elect to certify a breastfeeding woman for a period of 1 year postpartum or until a woman discontinues breastfeeding, whichever is earlier.”.

(2) PHYSICAL PRESENCE.—Section 17(d)(3)(C)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(C)(ii)) is amended—

(A) in subclause (I)(bb), by striking “from a provider other than the local agency; or” and inserting a semicolon;

(B) in subclause (II), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(III) an infant under 8 weeks of age—

“(aa) who cannot be present at certification for a reason determined appropriate by the local agency; and

“(bb) for whom all necessary certification information is provided.”.

(c) ADMINISTRATION.—

(1) PROCESSING VENDOR APPLICATIONS; PARTICIPANT ACCESS.—Section 17(f)(1)(C) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)(C)) is amended—

(A) in clause (i) by inserting “at any of the authorized retail stores under the program” after “the program”; and

(B) by redesignating clauses (ii) through (x) as clauses (iii) through (xi), respectively; and

(C) by inserting after clause (i) the following:

“(ii) procedures for accepting and processing vendor applications outside of the established timeframes if the State agency determines there will be inadequate access to the program, including in a case in which a previously authorized vendor sells a store under circumstances that do not permit timely notification to the State agency of the change in ownership;”.

(2) ALLOWABLE USE OF FUNDS.—

(A) IN GENERAL.—Section 17(f)(11) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(11)) is amended—

(i) by striking “(11) The Secretary” and inserting the following:

“(11) SUPPLEMENTAL FOODS.—

“(A) IN GENERAL.—The Secretary”; and

(ii) in the second sentence, by striking “To the degree” and inserting the following:

“(B) APPROPRIATE CONTENT.—To the degree”; and

(iii) by adding at the end the following:

“(C) ALLOWABLE USE OF FUNDS.—Subject to the availability of funds, the Secretary shall award grants to not more than 10 local sites determined by the Secretary to be geographically and culturally representative of State, local, and Indian agencies, to evaluate the feasibility of including fresh, frozen, or canned fruits and vegetables (to be made available through private funds) as an addition to the supplemental foods prescribed under this section.

“(D) REVIEW OF AVAILABLE SUPPLEMENTAL FOODS.—As frequently as determined by the Secretary to be necessary to reflect the most recent scientific knowledge, the Secretary shall—

(i) conduct a scientific review of the supplemental foods available under the program; and

(ii) amend the supplemental foods available, as necessary, to reflect nutrition science, public health concerns, and cultural eating patterns.”.

(B) RULEMAKING.—Not later than 18 months after the date of receiving the review initiated by the National Academy of Sciences, Institute of Medicine in September 2003 of the supplemental foods available for the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), the Secretary shall promulgate a final rule updating the prescribed supplemental foods available through the program.

(3) USE OF CLAIMS FROM LOCAL AGENCIES.—Section 17(f)(21) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(21)) is amended—

(A) in the paragraph heading, by striking “VENDORS” and inserting “LOCAL AGENCIES, VENDORS,”; and

(B) by striking “vendors” and inserting “local agencies, vendors,”.

(4) INFANT FORMULA BENEFITS.—

(A) IN GENERAL.—Section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) is amended by adding at the end the following:

“(25) INFANT FORMULA BENEFITS.—A State agency may round up to the next whole can of infant formula to allow all participants under the program to receive the full-authorized nutritional benefit specified by regulation.”.

(B) APPLICABILITY.—The amendment made by subparagraph (A) applies to infant formula provided under a contract resulting from a bid solicitation issued on or after October 1, 2004.

(5) NOTIFICATION OF VIOLATIONS.—Section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) (as amended by paragraph (4)) is amended by adding at the end the following:

“(26) NOTIFICATION OF VIOLATIONS.—If a State agency finds that a vendor has committed a violation that requires a pattern of occurrences in order to impose a penalty or sanction, the State agency shall notify the vendor of the initial violation in writing prior to documentation of another violation, unless the State agency determines that notifying the vendor would compromise an investigation.”.

(d) REAUTHORIZATION OF WIC PROGRAM.—Section 17(g) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)) is amended by striking “(g)(1)” and all that follows through “As authorized” in paragraph (1) and inserting the following:

“(g) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—

“(A) AUTHORIZATION.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2004 through 2009.

“(B) ADVANCE APPROPRIATIONS; AVAILABILITY.—As authorized”.

(e) NUTRITION SERVICES AND ADMINISTRATION FUNDS; COMPETITIVE BIDDING; RETAILERS.—

(1) IN GENERAL.—Section 17(h)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(2)(A)) is amended by striking “For each of the fiscal years 1995 through 2003, the” and inserting “The”.

(2) HEALTHY PEOPLE 2010 INITIATIVE.—Section 17(h)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(4)) is amended—

(A) in subparagraph (D), by striking “; and” and inserting a semicolon;

(B) in subparagraph (E), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(F) partner with communities, State and local agencies, employers, health care professionals, and other entities in the private sector to build a supportive breastfeeding environment for women participating in the program under this section to support the breastfeeding goals of the Healthy People 2010 initiative.”.

(3) SIZE OF STATE ALLIANCES.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) is amended by adding at the end the following:

“(iv) SIZE OF STATE ALLIANCES.—

“(I) IN GENERAL.—Except as provided in subclauses (II) through (IV), no State alliance may exist among States if the total number of infants served by States participating in the alliance as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, would exceed 100,000.

“(II) ADDITION OF INFANT PARTICIPANTS.—In the case of a State alliance that exists on the date of enactment of this clause, the alliance may continue and may expand to serve more than 100,000 infants but, except as provided in subclause (III), may not expand to include any additional State agency.

“(III) ADDITION OF SMALL STATE AGENCIES AND INDIAN STATE AGENCIES.—Any State alliance may expand to include any State agency that served less than 5,000 infant participants as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, or any Indian State agency, if the State agency or Indian State agency requests to join the State alliance.

“(IV) SECRETARIAL WAIVER.—The Secretary may waive the requirements of this clause not earlier than 30 days after submitting to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a written report that describes the cost-containment and competitive benefits of the proposed waiver.”.

(4) PRIMARY CONTRACT INFANT FORMULA.—

(A) IN GENERAL.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) (as amended by paragraph (3)) is amended—

(i) in clause (ii)(I), by striking “contract brand of” and inserting “primary contract”;

(ii) in clause (iii), by inserting “for a specific infant formula for which manufacturers submit a bid” after “lowest net price”; and

(iii) by adding at the end the following:

“(v) FIRST CHOICE OF ISSUANCE.—The State agency shall use the primary contract infant formula as the first choice of issuance (by formula type), with all other infant formulas issued as an alternative to the primary contract infant formula.”.

(B) APPLICABILITY.—The amendments made by subparagraph (A) apply to a contract resulting from a bid solicitation issued on or after October 1, 2004.

(5) REBATE INVOICES.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) (as amended by paragraph (4)(A)(iii)) is amended by adding at the end the following:

“(vi) REBATE INVOICES.—Each State agency shall have a system to ensure that infant formula rebate invoices, under competitive bidding, provide a reasonable estimate or an actual count of the number of units sold to participants in the program under this section.”.

(6) UNCOUPLING MILK AND SOY BIDS.—

(A) IN GENERAL.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) (as amended by paragraph (5)) is amended by adding at the end the following:

“(vii) SEPARATE SOLICITATIONS.—In soliciting bids for infant formula under a competitive bidding system, any State agency, or State alliance, that served under the program a monthly average of more than 100,000 infants during the preceding 12-month period shall solicit bids from infant formula manufacturers under procedures that require that bids for rebates or discounts are solicited for milk-based and soy-based infant formula separately.”.

(B) APPLICABILITY.—The amendment made by this paragraph applies to a bid solicitation issued on or after October 1, 2004.

(7) CENT-FOR-CENT ADJUSTMENTS.—

(A) IN GENERAL.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) (as amended by paragraph (6)(A)) is amended by adding at the end the following:

“(viii) CENT-FOR-CENT ADJUSTMENTS.—A bid solicitation for infant formula under the program shall require the manufacturer to adjust for price changes subsequent to the opening of the bidding process in a manner that requires—

“(I) a cent-for-cent increase in the rebate amounts if there is an increase in the lowest national wholesale price for a full truckload of the particular infant formula; and

“(II) a cent-for-cent decrease in the rebate amounts if there is a decrease in the lowest national wholesale price for a full truckload of the particular infant formula.”.

(B) CONFORMING AMENDMENT.—Section 17(h)(8)(A)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)(ii)) is amended by striking “rise” and inserting “change”.

(C) APPLICABILITY.—The amendments made by this paragraph apply to a bid solicitation issued on or after October 1, 2004.

(8) LIST OF INFANT FORMULA WHOLESALERS, DISTRIBUTORS, RETAILERS, AND MANUFACTURERS.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) (as amended by paragraph (7)(A)) is amended by adding at the end the following:

“(ix) LIST OF INFANT FORMULA WHOLESALERS, DISTRIBUTORS, RETAILERS, AND MANUFACTURERS.—The State agency shall maintain a list of—

“(I) infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations); and

“(II) infant formula manufacturers registered with the Food and Drug Administration that provide infant formula.

“(x) PURCHASE REQUIREMENT.—A vendor authorized to participate in the program under this section shall only purchase infant formula from the list described in clause (ix).”.

(9) FUNDS FOR INFRASTRUCTURE, MANAGEMENT INFORMATION SYSTEMS, AND SPECIAL NUTRITION EDUCATION.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended by striking paragraph (10) and inserting the following:

“(10) FUNDS FOR INFRASTRUCTURE, MANAGEMENT INFORMATION SYSTEMS, AND SPECIAL NUTRITION EDUCATION.—

“(A) IN GENERAL.—For each of fiscal years 2006 through 2009, the Secretary shall use for the purposes specified in subparagraph (B), \$64,000,000 or the amount of nutrition services and administration funds and supplemental food funds for the prior fiscal year that have not been obligated, whichever is less.

“(B) PURPOSES.—Of the amount made available under subparagraph (A) for a fiscal year, not more than—

“(i) \$14,000,000 shall be used for—

“(I) infrastructure for the program under this section;

“(II) special projects to promote breastfeeding, including projects to assess the effectiveness of particular breastfeeding promotion strategies; and

“(III) special State projects of regional or national significance to improve the services of the program;

“(ii) \$30,000,000 shall be used to establish, improve, or administer management information systems for the program, including changes necessary to meet new legislative or regulatory requirements of the program; and

“(iii) \$20,000,000 shall be used for special nutrition education such as breast feeding peer counselors and other related activities.

“(C) PROPORTIONAL DISTRIBUTION.—In a case in which less than \$64,000,000 is available to carry out this paragraph, the Secretary shall make a proportional distribution of funds allocated under subparagraph (B).”.

(10) VENDOR COST CONTAINMENT.—

(A) Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended by striking paragraph (11) and inserting the following:

“(11) VENDOR COST CONTAINMENT.—

“(A) PEER GROUPS.—

“(i) IN GENERAL.—The State agency shall—

“(I) establish a vendor peer group system;

“(II) in accordance with subparagraphs (B) and (C), establish competitive price criteria and allowable reimbursement levels for each vendor peer group; and

“(III) if the State agency elects to authorize any types of vendors described in subparagraph (D)(ii)(I)—

“(aa) distinguish between vendors described in subparagraph (D)(ii)(I) and other vendors by establishing—

“(AA) separate peer groups for vendors described in subparagraph (D)(ii)(I); or

“(BB) distinct competitive price criteria and allowable reimbursement levels for vendors described in subparagraph (D)(ii)(I) within a peer group that contains both vendors described in subparagraph (D)(ii)(I) and other vendors; and

“(bb) establish competitive price criteria and allowable reimbursement levels that comply with subparagraphs (B) and (C), respectively, and that do not result in higher food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

Nothing in this paragraph shall be construed to compel a State agency to achieve lower food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

“(ii) EXEMPTIONS.—The Secretary may exempt from the requirements of clause (i)—

“(I) a State agency that elects not to authorize any types of vendors described in subparagraph (D)(ii)(I) and that demonstrates to the Secretary that—

“(aa) compliance with clause (i) would be inconsistent with efficient and effective operation of the program administered by the State under this section; or

“(bb) an alternative cost-containment system would be as effective as a vendor peer group system; or

“(II) a State agency—

“(aa) in which the sale of supplemental foods that are obtained with food instruments from vendors described in subparagraph (D)(ii)(I) constituted less than 5 percent of total sales of supplemental foods that were obtained with food instruments in the State in the year preceding a year in which the exemption is effective; and

“(bb) that demonstrates to the Secretary that an alternative cost-containment system would be as effective as the vendor peer group system and would not result in higher food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

“(B) COMPETITIVE PRICING.—

“(i) IN GENERAL.—The State agency shall establish competitive price criteria for each peer group for the selection of vendors for participation in the program that—

“(I) ensure that the retail prices charged by vendor applicants for the program are competitive with the prices charged by other vendors; and

“(II) consider—

“(aa) the shelf prices of the vendor for all buyers; or

“(bb) the prices that the vendor bid for supplemental foods, which shall not exceed the shelf prices of the vendor for all buyers.

“(ii) PARTICIPANT ACCESS.—In establishing competitive price criteria, the State agency shall consider participant access by geographic area.

“(iii) SUBSEQUENT PRICE INCREASES.—The State agency shall establish procedures to ensure that a retail store selected for participation in the program does not, subsequent to selection, increase prices to levels that would make the store ineligible for selection to participate in the program.

“(C) ALLOWABLE REIMBURSEMENT LEVELS.—

“(i) IN GENERAL.—The State agency shall establish allowable reimbursement levels for supplemental foods for each vendor peer group that ensure—

“(I) that payments to vendors in the vendor peer group reflect competitive retail prices; and

“(II) that the State agency does not reimburse a vendor for supplemental foods at a level that would make the vendor ineligible for authorization under the criteria established under subparagraph (B).

“(ii) PRICE FLUCTUATIONS.—The allowable reimbursement levels may include a factor to reflect fluctuations in wholesale prices.

“(iii) PARTICIPANT ACCESS.—In establishing allowable reimbursement levels, the State agency shall consider participant access in a geographic area.

“(D) EXEMPTIONS.—The State agency may exempt from competitive price criteria and allowable reimbursement levels established under this paragraph—

“(i) pharmacy vendors that supply only exempt infant formula or medical foods that are eligible under the program; and

“(ii) vendors—

“(I) for which more than 50 percent of the annual revenue of the vendor from the sale of food items consists of revenue from the sale of supplemental foods that are obtained with food instruments; or

“(bb) who are new applicants likely to meet the criteria of item (aa) under criteria approved by the Secretary; and

“(II) that are nonprofit.

“(E) COST CONTAINMENT.—If a State agency elects to authorize any types of vendors described in subparagraph (D)(ii)(I), the State agency shall demonstrate to the Secretary, and the Secretary shall certify, that the competitive price criteria and allowable reimbursement levels established under this paragraph for vendors described in subparagraph (D)(ii)(I) do not result in average payments per voucher to vendors described in subparagraph (D)(ii)(I) that are higher than average payments per voucher to comparable vendors other than vendors described in subparagraph (D)(ii)(I).

“(F) LIMITATION ON PRIVATE RIGHTS OF ACTION.—Nothing in this paragraph may be construed as creating a private right of action.

“(G) IMPLEMENTATION.—A State agency shall comply with this paragraph not later than 18 months after the date of enactment of this paragraph.”

(B) CONFORMING AMENDMENT.—Section 17(f)(1)(C)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)(C)(i)) is amended by inserting before the semicolon the following: “, including a description of the State agency’s vendor peer group system, competitive price criteria, and allowable reimbursement levels that demonstrate that the State is in compliance with the cost-containment provisions in subsection (h)(11).”

(11) IMPOSITION OF COSTS ON RETAIL STORES.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended by striking paragraph (12) and inserting the following:

“(12) IMPOSITION OF COSTS ON RETAIL STORES.—The Secretary may not impose, or allow a State agency to impose, the costs of any equipment, system, or processing required for electronic benefit transfers on any retail store authorized to transact food instruments, as a condition for authorization or participation in the program.”

(12) UNIVERSAL PRODUCT CODES DATABASE.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) (as amended by paragraph (11)) is amended by adding at the end the following:

“(13) UNIVERSAL PRODUCT CODES DATABASE.—The Secretary shall—

“(A) establish a national universal product code database for use by all State agencies in carrying out the program; and

“(B) make available from appropriated funds such sums as are required for hosting, hardware and software configuration, and support of the database.”

(13) INCENTIVE ITEMS.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) (as amended by paragraph (12)) is amended by adding at the end the following:

“(14) INCENTIVE ITEMS.—A State agency shall not authorize or make payments to a vendor described in paragraph (11)(D)(ii)(I) that provides incentive items or other free merchandise, except food or merchandise of nominal value (as determined by the Secretary), to program participants unless the vendor provides to the State agency proof that the vendor obtained the incentive items or merchandise at no cost.”

(f) SPEND FORWARD AUTHORITY.—Section 17(i)(3)(A)(ii)(I) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)(3)(A)(ii)(I)) is amended by striking “1 percent” and inserting “3 percent”.

(g) MIGRANT AND COMMUNITY HEALTH CENTERS INITIATIVE.—Section 17(j) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(j)) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraph (5) as paragraph (4).

(h) FARMERS’ MARKET NUTRITION PROGRAM.—

(1) ROADSIDE STANDS.—Section 17(m)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(1)) is amended by inserting “and (at the option of a State) roadside stands” after “farmers’ markets”.

(2) MATCHING FUNDS.—Section 17(m)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(3)) is amended by striking “total” both places it appears and inserting “administrative”.

(3) BENEFIT VALUE.—Section 17(m)(5)(C)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(5)(C)(ii)) is amended by striking “\$20” and inserting “\$30”.

(4) REAUTHORIZATION.—Section 17(m)(9)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(9)(A)) is amended by striking clause (i) and inserting the following:

“(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2004 through 2009.”

(i) DEMONSTRATION PROJECT RELATING TO USE OF WIC PROGRAM FOR IDENTIFICATION AND ENROLLMENT OF CHILDREN IN CERTAIN HEALTH PROGRAMS.—

(1) IN GENERAL.—Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended by striking subsection (r).

(2) CONFORMING AMENDMENT.—Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by striking subsection (p).

#### SEC. 204. LOCAL WELLNESS POLICY.

(a) IN GENERAL.—Not later than the first day of the school year beginning after June 30, 2006, each local educational agency participating in a program authorized by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall establish a local school wellness policy for schools under the local educational agency that, at a minimum—

(1) includes goals for nutrition education, physical activity, and other school-based activities that are designed to promote student wellness in a manner that the local educational agency determines is appropriate;

(2) includes nutrition guidelines selected by the local educational agency for all foods available on each school campus under the local educational agency during the school day with the objectives of promoting student health and reducing childhood obesity;

(3) provides an assurance that guidelines for reimbursable school meals shall not be less restrictive than regulations and guidance issued by the Secretary of Agriculture pursuant to subsections (a) and (b) of section 10 of the Child Nutrition Act (42 U.S.C. 1779) and sections 9(f)(1) and 17(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(1), 1766(a)), as those regulations and guidance apply to schools;

(4) establishes a plan for measuring implementation of the local wellness policy, including designation of 1 or more persons within the local educational agency or at each school, as appropriate, charged with operational responsibility for ensuring that the school meets the local wellness policy; and

(5) involves parents, students, representatives of the school food authority, the school board, school administrators, and the public in the development of the school wellness policy.

**(b) TECHNICAL ASSISTANCE AND BEST PRACTICES.—**

(1) **IN GENERAL.**—The Secretary, in coordination with the Secretary of Education and in consultation with the Secretary of Health and Human Services, acting through the Centers for Disease Control and Prevention, shall make available to local educational agencies, school food authorities, and State educational agencies, on request, information and technical assistance for use in—

(A) establishing healthy school nutrition environments;

(B) reducing childhood obesity; and

(C) preventing diet-related chronic diseases.

(2) **CONTENT.**—Technical assistance provided by the Secretary under this subsection shall—

(A) include relevant and applicable examples of schools and local educational agencies that have taken steps to offer healthy options for foods sold or served in schools;

(B) include such other technical assistance as is required to carry out the goals of promoting sound nutrition and establishing healthy school nutrition environments that are consistent with this section;

(C) be provided in such a manner as to be consistent with the specific needs and requirements of local educational agencies; and

(D) be for guidance purposes only and not be construed as binding or as a mandate to schools, local educational agencies, school food authorities, or State educational agencies.

**(3) FUNDING.—**

(A) **IN GENERAL.**—On July 1, 2006, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection \$4,000,000, to remain available until September 30, 2009.

(B) **RECEIPT AND ACCEPTANCE.**—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

**SEC. 205. TEAM NUTRITION NETWORK.**

(a) **TEAM NUTRITION NETWORK.**—Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) is amended to read as follows:

**“SEC. 19. TEAM NUTRITION NETWORK.**

“(a) **PURPOSES.**—The purposes of the team nutrition network are—

“(1) to establish State systems to promote the nutritional health of school children of the United States through nutrition education and the use of team nutrition messages and material developed by the Secretary, and to encourage regular physical activity and other activities that support healthy lifestyles for children, including

those based on the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);

“(2) to provide assistance to States for the development of comprehensive and integrated nutrition education and active living programs in schools and facilities that participate in child nutrition programs;

“(3) to provide training and technical assistance and disseminate team nutrition messages to States, school and community nutrition programs, and child nutrition food service professionals;

“(4) to coordinate and collaborate with other nutrition education and active living programs that share similar goals and purposes; and

“(5) to identify and share innovative programs with demonstrated effectiveness in helping children to maintain a healthy weight by enhancing student understanding of healthful eating patterns and the importance of regular physical activity.

“(b) **DEFINITION OF TEAM NUTRITION NETWORK.**—In this section, the term ‘team nutrition network’ means a statewide multidisciplinary program for children to promote healthy eating and physical activity based on scientifically valid information and sound educational, social, and marketing principles.

**“(c) GRANTS.—**

“(1) **IN GENERAL.**—Subject to the availability of funds for use in carrying out this section, in addition to any other funds made available to the Secretary for team nutrition purposes, the Secretary, in consultation with the Secretary of Education, may make grants to State agencies for each fiscal year, in accordance with this section, to establish team nutrition networks to promote nutrition education through—

“(A) the use of team nutrition network messages and other scientifically based information; and

“(B) the promotion of active lifestyles.

“(2) **FORM.**—A portion of the grants provided under this subsection may be in the form of competitive grants.

“(3) **FUNDS FROM NONGOVERNMENTAL SOURCES.**—In carrying out this subsection, the Secretary may accept cash contributions from nongovernmental organizations made expressly to further the purposes of this section, to be managed by the Food and Nutrition Service, for use by the Secretary and the States in carrying out this section.

“(d) **ALLOCATION.**—Subject to the availability of funds for use in carrying out this section, the total amount of funds made available for a fiscal year for grants under this section shall equal not more than the sum of—

“(1) the product obtained by multiplying  $\frac{1}{2}$  cent by the number of lunches reimbursed through food service programs under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) during the second preceding fiscal year in schools, institutions, and service institutions that participate in the food service programs; and

“(2) the total value of funds received by the Secretary in support of this section from nongovernmental sources.

“(e) **REQUIREMENTS FOR STATE PARTICIPATION.**—To be eligible to receive a grant under this section, a State agency shall submit to the Secretary a plan that—

“(1) is subject to approval by the Secretary; and

“(2) is submitted at such time and in such manner, and that contains such information, as the Secretary may require, including—

“(A) a description of the goals and proposed State plan for addressing the health

and other consequences of children who are at risk of becoming overweight or obese;

“(B) an analysis of the means by which the State agency will use and disseminate the team nutrition messages and material developed by the Secretary;

“(C) an explanation of the ways in which the State agency will use the funds from the grant to work toward the goals required under subparagraph (A), and to promote healthy eating and physical activity and fitness in schools throughout the State;

“(D) a description of the ways in which the State team nutrition network messages and activities will be coordinated at the State level with other health promotion and education activities;

“(E) a description of the consultative process that the State agency employed in the development of the model nutrition and physical activity programs, including consultations with individuals and organizations with expertise in promoting public health, nutrition, or physical activity;

“(F) a description of how the State agency will evaluate the effectiveness of each program developed by the State agency;

“(G) an annual summary of the team nutrition network activities;

“(H) a description of the ways in which the total school environment will support healthy eating and physical activity; and

“(I) a description of how all communications to parents and legal guardians of students who are members of a household receiving or applying for assistance under the program shall be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and legal guardians can understand.

“(f) **STATE COORDINATOR.**—Each State that receives a grant under this section shall appoint a team nutrition network coordinator who shall—

“(1) administer and coordinate the team nutrition network within and across schools, school food authorities, and other child nutrition program providers in the State; and

“(2) coordinate activities of the Secretary, acting through the Food and Nutrition Service, and State agencies responsible for other children's health, education, and wellness programs to implement a comprehensive, coordinated team nutrition network program.

“(g) **AUTHORIZED ACTIVITIES.**—A State agency that receives a grant under this section may use funds from the grant—

“(1)(A) to collect, analyze, and disseminate data regarding the extent to which children and youths in the State are overweight, physically inactive, or otherwise suffering from nutrition-related deficiencies or disease conditions; and

“(B) to identify the programs and services available to meet those needs;

“(2) to implement model elementary and secondary education curricula using team nutrition network messages and material developed by the Secretary to create a comprehensive, coordinated nutrition and physical fitness awareness and obesity prevention program;

“(3) to implement pilot projects in schools to promote physical activity and to enhance the nutritional status of students;

“(4) to improve access to local foods through farm-to-cafeteria activities that may include the acquisition of food and the provision of training and education;

“(5) to implement State guidelines in health (including nutrition education and physical education guidelines) and to emphasize regular physical activity during school hours;

“(6) to establish healthy eating and lifestyle policies in schools;

“(7) to provide training and technical assistance to teachers and school food service

professionals consistent with the purposes of this section;

“(8) to collaborate with public and private organizations, including community-based organizations, State medical associations, and public health groups, to develop and implement nutrition and physical education programs targeting lower income children, ethnic minorities, and youth at a greater risk for obesity.

“(h) LOCAL NUTRITION AND PHYSICAL ACTIVITY GRANTS.—

“(1) IN GENERAL.—Subject to the availability of funds to carry out this subsection, the Secretary, in consultation with the Secretary of Education, shall provide assistance to selected local educational agencies to create healthy school nutrition environments, promote healthy eating habits, and increase physical activity, consistent with the Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341), among elementary and secondary education students.

“(2) SELECTION OF SCHOOLS.—In selecting local educational agencies for grants under this subsection, the Secretary shall—

“(A) provide for the equitable distribution of grants among—

“(i) urban, suburban, and rural schools; and

“(ii) schools with varying family income levels;

“(B) consider factors that affect need, including local educational agencies with significant minority or low-income student populations; and

“(C) establish a process that allows the Secretary to conduct an evaluation of how funds were used.

“(3) REQUIREMENT FOR PARTICIPATION.—To be eligible to receive assistance under this subsection, a local educational agency shall, in consultation with individuals who possess education or experience appropriate for representing the general field of public health, including nutrition and fitness professionals, submit to the Secretary an application that shall include—

“(A) a description of the need of the local educational agency for a nutrition and physical activity program, including an assessment of the nutritional environment of the school;

“(B) a description of how the proposed project will improve health and nutrition through education and increased access to physical activity;

“(C) a description of how the proposed project will be aligned with the local wellness policy required under section 204 of the Child Nutrition and WIC Reauthorization Act of 2004;

“(D) a description of how funds under this subsection will be coordinated with other programs under this Act, the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), or other Acts, as appropriate, to improve student health and nutrition;

“(E) a statement of the measurable goals of the local educational agency for nutrition and physical education programs and promotion;

“(F) a description of the procedures the agency will use to assess and publicly report progress toward meeting those goals; and

“(G) a description of how communications to parents and guardians of participating students regarding the activities under this subsection shall be in an understandable and uniform format, and, to the extent maximum practicable, in a language that parents can understand.

“(4) DURATION.—Subject to the availability of funds made available to carry out this subsection, a local educational agency receiving assistance under this subsection

shall conduct the project during a period of 3 successive school years beginning with the initial fiscal year for which the local educational agency receives funds.

“(5) AUTHORIZED ACTIVITIES.—An eligible applicant that receives assistance under this subsection—

“(A) shall use funds provided to—

“(i) promote healthy eating through the development and implementation of nutrition education programs and curricula based on the Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341); and

“(ii) increase opportunities for physical activity through after school programs, athletics, intramural activities, and recess; and

“(B) may use funds provided to—

“(i) educate parents and students about the relationship of a poor diet and inactivity to obesity and other health problems;

“(ii) develop and implement physical education programs that promote fitness and lifelong activity;

“(iii) provide training and technical assistance to food service professionals to develop more appealing, nutritious menus and recipes;

“(iv) incorporate nutrition education into physical education, health education, and after school programs, including athletics;

“(v) involve parents, nutrition professionals, food service staff, educators, community leaders, and other interested parties in assessing the food options in the school environment and developing and implementing an action plan to promote a balanced and healthy diet;

“(vi) provide nutrient content or nutrition information on meals served through the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act and items sold a la carte during meal times;

“(vii) encourage the increased consumption of a variety of healthy foods, including fruits, vegetables, whole grains, and low-fat dairy products, through new initiatives to creatively market healthful foods, such as salad bars and fruit bars;

“(viii) offer healthy food choices outside program meals, including by making low-fat and nutrient dense options available in vending machines, school stores, and other venues; and

“(ix) provide nutrition education, including sports nutrition education, for teachers, coaches, food service staff, athletic trainers, and school nurses.

“(6) REPORT.—Not later than 18 months after completion of the projects and evaluations under this subsection, the Secretary shall—

“(A) submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Agriculture, Nutrition and Forestry of the Senate a report describing the results of the evaluation under this subsection; and

“(B) make the report available to the public, including through the Internet.

“(i) NUTRITION EDUCATION SUPPORT.—In carrying out the purpose of this section to support nutrition education, the Secretary may provide for technical assistance and grants to improve the quality of school meals and access to local foods in schools and institutions.

“(j) LIMITATION.—Material prepared under this section regarding agricultural commodities, food, or beverages, must be factual and without bias.

“(k) TEAM NUTRITION NETWORK INDEPENDENT EVALUATION.—

“(1) IN GENERAL.—Subject to the availability of funds to carry out this subsection, the Secretary shall offer to enter into an agreement with an independent, nonpartisan, science-based research organization—

“(A) to conduct a comprehensive independent evaluation of the effectiveness of the team nutrition initiative and the team nutrition network under this section; and

“(B) to identify best practices by schools in—

“(i) improving student understanding of healthful eating patterns;

“(ii) engaging students in regular physical activity and improving physical fitness;

“(iii) reducing diabetes and obesity rates in school children;

“(iv) improving student nutrition behaviors on the school campus, including by increasing healthier meal choices by students, as evidenced by greater inclusion of fruits, vegetables, whole grains, and lean dairy and protein in meal and snack selections;

“(v) providing training and technical assistance for food service professionals resulting in the availability of healthy meals that appeal to ethnic and cultural taste preferences;

“(vi) linking meals programs to nutrition education activities;

“(vii) successfully involving parents, school administrators, the private sector, public health agencies, nonprofit organizations, and other community partners;

“(viii) ensuring the adequacy of time to eat during school meal periods; and

“(ix) successfully generating revenue through the sale of food items, while providing healthy options to students through vending, student stores, and other venues.

“(2) REPORT.—Not later than 3 years after funds are made available to carry out this subsection, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the findings of the independent evaluation.

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

(b) CONFORMING AMENDMENT.—Section 21(c)(2)(E) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b-1(c)(2)(E)) is amended by striking “, including” and all that follows through “1966”.

## SEC. 206. REVIEW OF BEST PRACTICES IN THE BREAKFAST PROGRAM.

(a) REVIEW.—

(1) IN GENERAL.—Subject to the availability of funds under subsection (c), the Secretary of Agriculture shall enter into an agreement with a research organization to collect and disseminate a review of best practices to assist school food authorities in addressing existing impediments at the State and local level that hinder the growth of the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(2) RECOMMENDATIONS.—The review shall describe model breakfast programs and offer recommendations for schools to overcome obstacles, including—

(A) the length of the school day;

(B) bus schedules; and

(C) potential increases in costs at the State and local level.

(b) DISSEMINATION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall—



(1) make the review required under subsection (a) available to school food authorities via the Internet, including recommendations to improve participation in the school breakfast program; and

(2) transmit to Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a copy of the review.

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

### **TITLE III—COMMODITY DISTRIBUTION PROGRAMS**

#### **SEC. 301. COMMODITY DISTRIBUTION PROGRAMS.**

Section 15 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note; Public Law 100-237) is amended by striking subsection (e).

### **TITLE IV—MISCELLANEOUS**

#### **SEC. 401. SENSE OF CONGRESS REGARDING EFFORTS TO PREVENT AND REDUCE CHILDHOOD OBESITY.**

(a) **FINDINGS.**—Congress finds that—

(1) childhood obesity in the United States has reached critical proportions;

(2) childhood obesity is associated with numerous health risks and the incidence of chronic disease later in life;

(3) the prevention of obesity among children yields significant benefits in terms of preventing disease and the health care costs associated with such diseases;

(4) further scientific and medical data on the prevalence of childhood obesity is necessary in order to inform efforts to fight childhood obesity; and

(5) the State of Arkansas—

(A) is the first State in the United States to have a comprehensive statewide initiative to combat and prevent childhood obesity by—

(i) annually measuring the body mass index of public school children in the State from kindergarten through 12th grade; and

(ii) providing that information to the parents of each child with associated information about the health implications of the body mass index of the child;

(B) maintains, analyzes, and reports on annual and longitudinal body mass index data for the public school children in the State; and

(C) develops and implements appropriate interventions at the community and school level to address obesity, the risk of obesity, and the condition of being overweight, including efforts to encourage healthy eating habits and increased physical activity.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) the State of Arkansas, in partnership with the University of Arkansas for Medical Sciences and the Arkansas Center for Health Improvement, should be commended for its leadership in combating childhood obesity; and

(2) the efforts of the State of Arkansas to implement a statewide initiative to combat and prevent childhood obesity are exemplary and could serve as a model for States across the United States.

### **TITLE V—IMPLEMENTATION**

#### **SEC. 501. GUIDANCE AND REGULATIONS.**

(a) **GUIDANCE.**—As soon as practicable after the date of enactment of this Act, the Secretary of Agriculture shall issue guidance to implement the amendments made by sections 102, 103, 104, 105, 106, 107, 111, 116, 119(c), 119(g), 120, 126(b), 126(c), 201, 203(a)(3), 203(b), 203(c)(5), 203(e)(3), 203(e)(4), 203(e)(5), 203(e)(6), 203(e)(7), 203(e)(10), and 203(h)(1).

(b) **INTERIM FINAL REGULATIONS.**—The Secretary may promulgate interim final regula-

tions to implement the amendments described in subsection (a).

(c) **REGULATIONS.**—Not later than 2 years after the date of enactment of this Act, the Secretary shall promulgate final regulations to implement the amendments described in subsection (a).

#### **SEC. 502. EFFECTIVE DATES.**

(a) **IN GENERAL.**—Except as otherwise provided in this Act, this Act and the amendments made by this Act take effect on the date of enactment of this Act.

(b) **SPECIAL EFFECTIVE DATES.**—

(1) **JULY 1, 2004.**—The amendments made by sections 106, 107, 126(c), and 201 take effect on July 1, 2004.

(2) **OCTOBER 1, 2004.**—The amendments made by sections 119(c), 119(g), 202(a), 203(a), 203(b), 203(c)(1), 203(c)(5), 203(e)(5), 203(e)(8), 203(e)(10), 203(e)(13), 203(f), 203(h)(1), and 203(h)(2) take effect on October 1, 2004.

(3) **JANUARY 1, 2005.**—The amendments made by sections 116(f)(1) and 116(f)(3) take effect on January 1, 2005.

(4) **JULY 1, 2005.**—The amendments made by sections 102, 104, 105, 111, and 126(b) take effect on July 1, 2005.

(5) **OCTOBER 1, 2005.**—The amendments made by sections 116(d) and 203(e)(9) take effect on October 1, 2005.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

### **NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued**

Mr. WARNER. In consultation with the majority leader, the distinguished Democratic leader, and the Democratic whip, Senator LEVIN and I have worked out a series of steps we are going to begin to take in *seriatim* at this time. The first step is that I yield the floor such that the Chair can recognize the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin.

#### **AMENDMENT NO. 3400**

Mr. FEINGOLD. I ask for regular order with regard to amendment No. 3400.

The PRESIDING OFFICER. The amendment is now pending.

Mr. FEINGOLD. Mr. President, I understand there will be a second-degree amendment offered to my amendment which is to bring a small measure of relief to military families by allowing the FMLA-eligible family members of deployed personnel to be able to use the FMLA benefits for issues directly related to or resulting from their loved one's deployment. This has been accepted by the body previously and put into other legislation. It was certainly my hope that we would be able to move forward with this. It is something our military families desperately need. However, it is my understanding that this second-degree amendment would require protracted debate. It is in our

interest to move this important Department of Defense authorization bill forward.

Mr. WARNER. If the Senator would withhold.

Mr. FEINGOLD. I yield to the Senator.

#### **AMENDMENT NO. 3475 TO AMENDMENT NO. 3400**

(Purpose: To enable military family members to take time off to attend to deployment-related business, tasks, and other family issues.)

Mr. WARNER. There is at the desk a second-degree amendment which I submit on behalf of Senator GREGG and myself.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. GREGG, for himself and Mr. WARNER, proposes an amendment 3475 to amendment 3400.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. GREGG. Mr. President, Senator FEINGOLD has offered an amendment intended to help military families who have a family member activated in support of a contingency operation. First of all, I make it clear that all of us want to assist families placed in the difficult position of operating with one family member called to duty.

That is why the underlying bill contains provisions such as permanently increasing the Family Separation Allowance, FSA, payable to deployed servicemen and women with dependents up to \$250 a month.

But the proposal made by Senator FEINGOLD to expand the Family Medical Leave Act is not the right approach. I rise to offer an alternative proposal as a second-degree amendment. The amendment I am offering today presents military families a much better method for obtaining the flexibility they may need to prepare for activation and to keep the family running while a family member is called to duty.

The Feingold amendment would offer some employees unpaid leave. My amendment will offer paid leave. While the Feingold amendment applies only to those military family members that work for employers with 50 or more employees, and offers no assistance at all to individuals who work for smaller employers, my amendment will apply to all military family employees subject to the Fair Labor Standards Act.

The Feingold amendment will also create uncertainty and animosity in the workplace by giving employees the vaguely defined right to take intermittent leave with minimal notice for any "issue relating to" "the family member's service"—a phrase which can be interpreted to cover just about any activity.

My amendment, on the other hand offers a clear method for earning and using paid leave time.

The Feingold amendment is a mandate in search of a problem—no need has been demonstrated for it and in

fact, in a recent survey of activated Armed Service members' spouses, 80 percent stated that their employers were supportive of their need to complete pre-activation tasks.

In light of this existing support by employers, my amendment creates a voluntary system of adding flextime to the work schedule. Therefore, employers who already have programs in place to accommodate military families will have the option of maintaining those programs or adopting a flextime initiative, they will not be forced to add another complicated layer onto the already confusing Family and Medical Leave law.

I also point out that the Feingold amendment has never been the subject of a single House or Senate hearing. I am sure that many of my colleagues, like me, have heard from businesses concerned about the difficulties they will face in interpreting and implementing the Feingold amendment.

Flextime proposals, however, have been vetted in no fewer than 8 hearings in the Senate and the U.S. House of Representatives. There is also concerns that the Feingold amendment may threaten the operation of military bases. According to the Department of Defense, "If a major military unit were deployed from a single base, this policy could effectively shut down the installation depending upon the number of family member employees covered."

My amendment would not present such a threat to military installations because it does not apply to public employees.

Finally, Mr. President, I recognize that all of us want to do what we can to ease the burden on families who have a family member—be it a spouse, parent or child—serving to protect our nation. The sacrifice they are willing to make is nothing short of remarkable. I believe the approach I am offering here today is the best way to help these families. I urge my colleagues to support my amendment.

Mr. KENNEDY. Mr. President, the Feingold amendment builds on a time tested law, the Family Medical Leave Act, to allow family members flexibility to prepare to send their loved ones to Iraq, Afghanistan, and elsewhere abroad to fight on behalf of their Nation. The Family Medical Leave Act has helped more than 35 million Americans over the last 10 years. It will help even more under the Feingold amendment. The amendment will allow family members to take the time off they need to meet child care needs, care for elderly parents, and otherwise balance their family responsibilities as their loved ones prepare for active duty.

The reason this laudable Feingold amendment is being withdrawn is because our colleagues on the other side of the aisle want to give our military families a pay cut.

Corporate profits are growing, while worker wages are not. Yet Republicans keep trying to implement more policies that are bad for workers. First,

Republicans took away overtime protections from millions of Americans. Now, they want to give employers additional power to decide how workers are to be compensated for their overtime work.

The Fair Labor Standards Act, FLSA, currently requires employers to pay workers time-and-a-half for hours worked in excess of 40 per week. When workers put in overtime hours now, they have a right to time and half pay, and they have total control over how or when to use that pay.

The Gregg amendment would allow employers to pay workers nothing for overtime work at the time the work is performed, in exchange for a promise of a new schedule. Under current law, employers are free to offer more flexible schedules. The only difference is that they have to pay workers for their overtime hours.

For those who work overtime, overtime pay constitutes 25 percent of their pay. Middle class families, already squeezed in today's economy, rely on these added earnings for their children's college tuition, their own retirement, or even to meet their monthly bills. In fact, millions of workers depend on cash overtime to make ends meet and pay their housing, food and healthcare bills.

The Gregg proposal has insufficient enforcement provisions to ensure that employees will not be forced to change their schedules instead of getting overtime pay. This will mean a pay cut for millions of Americans. Workers deserve a pay raise, not a pay cut.

Mr. LEAHY. Mr. President, I rise today to express my strong support for the amendment offered by Senator FEINGOLD.

Senator FEINGOLD's amendment, which I am proud to cosponsor, would allow the work of the Inspector General of the Coalition Provisional Authority, CPA-IG, to continue its work uninterrupted after the June 30 handover.

This is critical. Congress provided more than \$18 billion to rebuild Iraq, roughly the same amount that we spend on the rest of the world combined. Congress jammed through the Iraq supplemental appropriations bill in an extremely short time, without a sufficient number of hearings, into a very chaotic environment without the usual financial controls.

Recognizing this reality, Congress created a strong, independent inspector general to help police these funds.

In the months that followed passage of the Iraq supplemental, we heard numerous reports of waste, fraud, and abuse. If anything, this should have sent a clear signal to the administration and Congress that we need more—not less—oversight of these funds.

It defies logic then that the State Department is now proposing to weaken the one entity that Congress specifically tasked with keeping track of these tax dollars.

The State Department's plan could undermine the independence of this in-

spector general and disrupt this important work, reducing Congress's ability to account for these funds. It is unlocking the vault to those who want to cheat us.

The State Department also has told the Appropriations Committee that it will have to create 25 new positions to handle the work in Iraq.

Let me get this straight. We want to close down an IG that has about 60 people in place, which are actively conducting audits and rooting out waste, fraud, and abuse.

After the administration is finished closing down that office, they will turn around and hire 25 new people to do the same work—only through at a lower level office at the State Department.

Why on Earth would we want to do this? At a time when we are hearing weekly reports of abuse by Halliburton and others, why would we want to reinvent the wheel? Why would we downgrade the status of the CPA-IG and undermine its independence? It just does not make any sense.

This is why the amendment offered by the Senator from Wisconsin is so important.

This is why I support his amendment.

Last year Senator FEINGOLD and I offered an amendment to the supplemental bill for Iraq and Afghanistan that established an inspector general for the Coalition Provisional Authority so that there would be one auditing body completely focused on ensuring taxpayer dollars are spent wisely and efficiently, and that this effort is free of waste, fraud, and abuse.

Today the CPA, as we all know, is phasing out, but the reconstruction effort has only just begun. According to the Congressional Research Service, as of May 18, only \$4.2 billion of the \$18.4 billion Congress appropriated for reconstruction in November had even been obligated. This amendment would ensure that the inspector general's office can continue its important work even after June 30 rather than being compelled to start wrapping up and shutting down while so much important work remains to be done.

It renames the Office of the CPA IG, changing it to Special Inspector General for Iraq Reconstruction. The amendment establishes that this inspector general shall continue operating until the lion's share of the money Congress has appropriated to date for the Iraq relief and reconstruction fund has been obligated.

American taxpayers have been asked to shoulder a tremendous burden when it comes to the reconstruction of Iraq. Over 20 billion taxpayer dollars have been appropriated for the Iraq relief and reconstruction fund. That is more than the entire fiscal year 2004 Foreign Operations annual appropriation. It is more than the entire fiscal year 2004 Foreign Operations annual appropriation. This is a tremendous sum to devote to one country.

We all agreed last year that it required an entity on the ground, exclusively focused on this effort, to ensure

adequate funding and oversight. We agreed that we need a qualified, independent watchdog with all the powers and the authorities that accrue to inspectors general under the Inspector General Act of 1978. We agreed that business as usual whereby individual agency IG's attempt to oversee this mammoth effort in addition to everything else the agency does it simply not appropriate in this case.

There is nothing ordinary about the nature of the U.S. taxpayer investment in Iraq. Ordinary measures will not suffice.

This amendment modifies the legislation creating this IG to ensure that it does not disappear along with the CPA, but instead continues to operate until the amount of reconstruction spending in Iraq more closely resembles other large bilateral foreign assistance programs, which are overseen by existing agency inspectors general. Specifically, to phases out the special IG after 80 percent of the Iraq Relief and Reconstruction Fund appropriated to date is obligated. If that fund grows substantially in the next calendar, then Congress can consider the wisdom of adjusting this mandate accordingly.

Let there be no confusion, this inspector general is only tasked with overseeing how U.S. taxpayer dollars are spent. It does not have a mandate to oversee Iraqi resources. That is not what this is about. So there is nothing at all in continuing this operation that is inconsistent with the transfer of sovereignty on June 30.

Because the Department of Defense has responsibility for what is happening to some reconstruction dollars and the Department of State will have responsibility going forward, it makes good sense to have a focused IG on the ground who is able to see the entire picture at once—not being completely required to just focus on the State Department position or just focus on the Department of Defense portion. This amendment is in no way hostile to the reconstruction effort. This amendment is about trying to get it right.

Suggesting that a special inspector general's office continues to be in order in Iraq is hardly revolutionary. As I have mentioned, the reconstruction budget for Iraq is bigger than the entire fiscal year 2004 Foreign Operations Appropriations bill. Yet five different inspectors general—at USAID, at the State Department, at the Defense Department, at the Treasury, and at the Export-Import Bank—are charged with overseeing portions of that account. In fact, currently some 41 Federal establishments and designated Federal entities with annual budgets less than \$21 billion have their own, independent, statutorily mandated inspector general, from the Railroad Retirement Board to the Smithsonian Institution. We ask for focused accountability when taxpayer dollars are a stake in these situations. We must demand the same in Iraq.

Obviously, when you are talking about \$20 billion just for this Iraq situ-

ation, we have to do the same thing. We must demand the same in Iraq.

To date, the Inspector General for the Coalition Provisional Authority has made important progress, and has some 30 active investigations and 19 audits underway. A whistleblower hotline established by the inspector general has received hundreds of calls. This is clearly not the time to pull the plug on his important effort.

I urge my colleagues to support this amendment. This is the critical point: To oppose this amendment is to vote for less oversight of the reconstruction effort in Iraq than we have today. It is a step backward if we don't. We cannot abdicate our oversight responsibility. The stakes are far too high for that.

AMENDMENT NO. 3400 WITHDRAWN

Mr. FEINGOLD. In light of the offering of the second-degree amendment, I am about to ask unanimous consent to withdraw my amendment, but I first indicate how important it is we provide this FMLA benefit to these families. Obviously, this issue will return, but in the spirit of trying to resolve this issue and move the bill forward, I now ask unanimous consent to withdraw my amendment No. 3400.

Mr. WARNER. No objection.

The PRESIDING OFFICER. The amendment is withdrawn.

AMENDMENT NO. 3475 WITHDRAWN

Mr. WARNER. And the second-degree amendment likewise is withdrawn.

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

The Senator from Nevada.

Mr. REID. Before the Senator from Wisconsin leaves the Senate, I want the record to indicate he has worked hard on issues relating to veterans. This is no exception.

I know the Senator, when he travels home to Wisconsin, will meet with American Legion, Veterans of Foreign Wars, and other such assembled groups. By looking at this record, they should understand what the Senator from Wisconsin has tried to do for the veterans of this country. I applaud and commend the Senator from Wisconsin for his tenacity. And he will be back, knowing the Senator from Wisconsin, to fight another day.

The PRESIDING OFFICER. The Senator from Wisconsin.

AMENDMENT NO. 3288

Mr. FEINGOLD. Mr. President, I now ask for the regular order with regard to amendment No. 3288.

The PRESIDING OFFICER. The amendment is pending.

Mr. FEINGOLD. Mr. President, for this amendment, which I offered earlier and had the yeas and nays ordered on, I now ask unanimous consent that the yeas and nays be vitiated.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. No objection.

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

Mr. FEINGOLD. Mr. President, I thank the chairman of the committee

for his cooperation and for his support on this important amendment, which I understand will be accepted. This amendment allows the important work of the Inspector General of the CPA in Iraq to continue after the June 30 transition.

We are talking here about \$20 billion of American taxpayers' dollars. Only about \$4.5 billion has already been contracted for. So the remainder is still going to be expended. There are a great deal of audits and other efforts being made on the ground. That should continue. This has to do with protecting the American taxpayers.

I am delighted both the chairman and ranking member have expressed support for this amendment. I am confident, with their assurances, that this amendment will make it all the way through the process and become the law of the land so this fine work of this inspector general can continue.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, the matter has been discussed between myself, Senator LEVIN, Senator HARRY REID, and the distinguished Senator from Wisconsin. The concept of the inspector general is a proven concept. It is a valuable concept in the administration of our expenditures to have accountability.

We shall work on it to see that from that conference evolves, hopefully, an amendment that is a part of the statute to be incorporated eventually from the conference report that reflects the goals the Senator has set out. That is correct.

Mr. FEINGOLD. Mr. President, as to the amendment as we have crafted it, which was carefully and specifically crafted, I take the chairman's comment to indicate the approach we have taken in the Senate is the approach he will be advocating in conference.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank and congratulate the Senator from Wisconsin for this amendment. He has been an absolute bulldog when it comes to protecting taxpayers' dollars, just as he has been a fighter for veterans, as in his previous discussion.

I want to tell him I know we will be fighting with all of our energy in conference to retain this provision. It is vitally important there be this kind of an inspector general review and an inspector general who has the kind of independent power the Senator from Wisconsin has always fought for. We intend to do exactly that, to carry out, to wage his battle in conference to retain this provision.

Mr. WARNER. Mr. President, I join in thanking the Senator for his cooperation.

I draw the attention of the ranking member to suggest at this point in time we clear a package of managers' amendments.

Mr. LEVIN. We need to pass this amendment first.

Mr. WARNER. Yes, please.

The PRESIDING OFFICER. The Feingold amendment is still the pending question.

Mr. FEINGOLD. Mr. President, I urge that the amendment be adopted.

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

The amendment (No. 3288) was agreed to.

Mr. WARNER. I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, I rise today to speak about a very simple amendment that everyone should support. This amendment requires the Inspector General of the Department of Defense (DOD-IG), in consultation with the Inspectors General of the State Department and the CIA, to conduct a comprehensive investigation into the programs and activities of the Iraqi National Congress.

Over the last 10 years, we have seen funds from the U.S. Government spent in highly questionable, if not fraudulent ways, including money spent on oil paintings and health club memberships.

But this is only the tip of the iceberg. A number of serious questions remain unanswered concerning the INC. Here are a couple of examples:

First, the INC spent millions in setting up offices around the world, including London, Prague, Damascus, and Tehran. The State Department's internal documents indicated that they really had no idea of what was happening in some of these offices—especially Tehran. In light of the recent press reports about INC intelligence sharing with Iran, I think the DOD-IG should take a look at this issue and see what was happening in the Tehran office. We need to get to the bottom of this.

Second, the INC spent millions to set up radio and television broadcasting inside Iraq. The radio program seemed redundant as the U.S. Government was, at the time, funding Radio Free Iraq. A New York Times article questioned the effectiveness of the TV broadcasting program. Kurdish officials indicated that, despite repeated attempts, they could never pickup the INC's TV broadcast inside Iraq. This, again, raises questions about how this money is being spent. The IG should examine this issue. We need to get to the bottom of this.

Third the INC's Informaiton Collection Program—funded initially by the State Department and later by the Defense Department—continues to be a source of controversy and mystery. I have a memo here, written by the INC to Appropriations Committee staff, detailing the INC's Information Collection Program. In this memo, the INC claims to have written numerous reports to senior Administration officials, who are listed in this memo, on

topics including WMD proliferation. The Administration disputes this claim. Again, we need to get to the bottom of this.

I could go on and on. However, in the interests of time, I will simply say that there are many, serious unanswered questions about the INC's activities.

What was the INC doing with U.S. taxpayer dollars? What was going on in the Tehran office? Did the Information Collection Program contribute to intelligence failures in Iraq? Were the broadcasting programs at all effective in gathering support for U.S. efforts in Iraq?

To be sure, there have been a few investigations into INC. However, these have been incomplete, offering only a glimpse of what occurred.

A few years ago, the State Department Inspector General issued two reports on the INC. But these reports only covered \$4.3 million and examined only the Washington and London Offices. The State Department IG informed my office yesterday that these are the only two audits they conducted and have no plans to conduct audits on this issue.

A GAO report, published earlier this year, summarized the different grant agreements that the State Department entered into with the INC, but this report did not attempt to answer the myriad questions that remain about the INC.

Another GAO report is underway, but this looks only at the narrow question of whether the INC violated U.S. laws concerning the use of taxpayer funds to pay for public propaganda.

Finally, according to press reports, the Intelligence Committee is looking to a few issues related to the INC.

My amendment is consistent with these investigations. The DOD-IG does not have to reinvent the wheel. It can build off this existing body of work to answer questions that will remain long after these investigation have been completed.

Mr. President, my amendment is about transparency. My amendment is about accountability. My amendment is about getting to the bottom of one of the most mismanaged programs in recent history.

Most importantly, my amendment is about learning from our mistakes so we do not repeat them in the future. I urge my colleague to support my amendment.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 3315, AS MODIFIED

Mr. REID. Mr. President, there is an amendment pending by Senator LANDRIEU; is that true?

The PRESIDING OFFICER. That is correct.

Mr. REID. The number of that amendment?

The PRESIDING OFFICER. Amendment No. 3315.

Mr. REID. Mr. President, I ask unanimous consent that there be a modification to the amendment offered by

Senators LANDRIEU, SNOWE, ENSIGN, and MIKULSKI.

The PRESIDING OFFICER. Is there objection to the modification?

Mr. WARNER. Mr. President, there is no objection. The matter has been carefully worked through the course of the evening, and it is ready for action by the Chair.

The PRESIDING OFFICER. Without objection, the amendment is modified.

The amendment (No. 3315), as modified, is as follows:

On page 130, after line 9, insert the following:

**SEC. 642. FULL SBP SURVIVOR BENEFITS FOR SURVIVING SPOUSES OVER AGE 62.**

(a) PHASED INCREASE IN BASIC ANNUITY.—

(1) INCREASE TO 55 PERCENT.—Subsection (a)(1)(B)(i) of section 1451 of title 10, United States Code, is amended by striking “35 percent of the base amount.” and inserting “the product of the base amount and the percent applicable for the month. The percent applicable for a month is 35 percent for months beginning before October 2005, 40 percent for months beginning after September 2005 and before October 2008, 45 percent for months beginning after September 2008, and 55 percent for months beginning after September 2014.”.

(2) RESERVE-COMPONENT ANNUITY.—Subsection (a)(2)(B)(i)(I) of such section is amended by striking “35 percent” and inserting “the percent specified under paragraph (1)(B)(i) as being applicable for the month”.

(3) SPECIAL-ELIGIBILITY ANNUITY.—Subsection (c)(1)(B)(i) of such section is amended—

(A) by striking “35 percent” and inserting “the applicable percent”; and

(B) by adding at the end the following: “The percent applicable for a month under the preceding sentence is the percent specified under subsection (a)(1)(B)(i) as being applicable for the month.”.

(4) CONFORMING AMENDMENT.—The heading for subsection (d)(2)(A) of such section is amended to read as follows: “COMPUTATION OF ANNUITY.—”.

(b) PHASED ELIMINATION OF SUPPLEMENTAL ANNUITY.—

(1) DECREASING PERCENTAGES.—Section 1457(b) of title 10, United States Code, is amended—

(A) by striking “5, 10, 15, or 20 percent” and inserting “the applicable percent”; and

(B) by inserting after the first sentence the following: “The percent used for the computation shall be an even multiple of 5 percent and, whatever the percent specified in the election, may not exceed 20 percent for months beginning before October 2005, 15 percent for months beginning after September 2005 and before October 2008, and 10 percent for months beginning after September 2008.”.

(2) REPEAL OF PROGRAM IN 2014.—Effective on October 1, 2014, chapter 73 of such title is amended—

(A) by striking subchapter III; and

(B) by striking the item relating to subchapter III in the table of subchapters at the beginning of that chapter.

(c) RECOMPUTATION OF ANNUITIES.—

(1) REQUIREMENT FOR RECOMPUTATION.—Effective on the first day of each month referred to in paragraph (2)—

(A) each annuity under section 1450 of title 10, United States Code, that commenced before that month, is computed under a provision of section 1451 of that title amended by subsection (a), and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that provision, as so amended, had been used for the initial computation of the annuity; and

(B) each supplemental survivor annuity under section 1457 of such title that commenced before that month and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that section, as amended by this section, had been used for the initial computation of the supplemental survivor annuity.

(2) **TIMES FOR RECOMPUTATION.**—The requirements for recomputation of annuities under paragraph (1) apply with respect to the following months:

(A) October 2005.

(B) October 2008.

(C) October 2014.

(d) **RECOMPUTATION OF RETIRED PAY REDUCTIONS FOR SUPPLEMENTAL SURVIVOR ANNUITIES.**—The Secretary of Defense shall take such actions as are necessitated by the amendments made by subsection (b) and the requirements of subsection (c)(1)(B) to ensure that the reductions in retired pay under section 1460 of title 10, United States Code, are adjusted to achieve the objectives set forth in subsection (b) of that section.

**SEC. 643. OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING OCTOBER 1, 2005.**

(a) **PERSONS NOT CURRENTLY PARTICIPATING IN SURVIVOR BENEFIT PLAN.**—

(1) **ELECTION OF SBP COVERAGE.**—An eligible retired or former member may elect to participate in the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, during the open enrollment period specified in subsection (f).

(2) **ELECTION OF SUPPLEMENTAL ANNUITY COVERAGE.**—An eligible retired or former member who elects under paragraph (1) to participate in the Survivor Benefit Plan at the maximum level may also elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan established under subchapter III of chapter 73 of title 10, United States Code.

(3) **ELIGIBLE RETIRED OR FORMER MEMBER.**—For purposes of paragraphs (1) and (2), an eligible retired or former member is a member or former member of the uniformed services who on the day before the first day of the open enrollment period is not a participant in the Survivor Benefit Plan and—

(A) is entitled to retired pay; or

(B) would be entitled to retired pay under chapter 1223 of title 10, United States Code, but for the fact that such member or former member is under 60 years of age.

(4) **STATUS UNDER SBP OF PERSONS MAKING ELECTIONS.**—

(A) **STANDARD ANNUITY.**—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(A) shall be treated for all purposes as providing a standard annuity under the Survivor Benefit Plan.

(B) **RESERVE-COMPONENT ANNUITY.**—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(B) shall be treated for all purposes as providing a reserve-component annuity under the Survivor Benefit Plan.

(b) **ELECTION TO INCREASE COVERAGE UNDER SBP.**—A person who on the day before the first day of the open enrollment period is a participant in the Survivor Benefit Plan but is not participating at the maximum base amount or is providing coverage under the Plan for a dependent child and not for the person's spouse or former spouse may, during the open enrollment period, elect to—

(1) participate in the Plan at a higher base amount (not in excess of the participant's retired pay); or

(2) provide annuity coverage under the Plan for the person's spouse or former spouse at a base amount not less than the base amount provided for the dependent child.

(c) **ELECTION FOR CURRENT SBP PARTICIPANTS TO PARTICIPATE IN SUPPLEMENTAL SBP.**—

(1) **ELECTION.**—A person who is eligible to make an election under this paragraph may elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan established under subchapter III of chapter 73 of title 10, United States Code.

(2) **PERSONS ELIGIBLE.**—Except as provided in paragraph (3), a person is eligible to make an election under paragraph (1) if on the day before the first day of the open enrollment period the person is a participant in the Survivor Benefit Plan at the maximum level, or during the open enrollment period the person increases the level of such participation to the maximum level under subsection (b) of this section, and under that Plan is providing annuity coverage for the person's spouse or a former spouse.

(3) **LIMITATION ON ELIGIBILITY FOR CERTAIN SBP PARTICIPANTS NOT AFFECTED BY TWO-TIER ANNUITY COMPUTATION.**—A person is not eligible to make an election under paragraph (1) if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan is to be computed under section 1451(e) of title 10, United States Code. However, such a person may during the open enrollment period waive the right to have that annuity computed under such section 1451(e). Any such election is irrevocable. A person making such a waiver may make an election under paragraph (1) as in the case of any other participant in the Survivor Benefit Plan.

(d) **MANNER OF MAKING ELECTIONS.**—An election under this section shall be made in writing, signed by the person making the election, and received by the Secretary concerned before the end of the open enrollment period. Any such election shall be made subject to the same conditions, and with the same opportunities for designation of beneficiaries and specification of base amount, that apply under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be. A person making an election under subsection (a) to provide a reserve-component annuity shall make a designation described in section 1448(e) of title 10, United States Code.

(e) **EFFECTIVE DATE FOR ELECTIONS.**—Any such election shall be effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(f) **OPEN ENROLLMENT PERIOD.**—The open enrollment period under this section shall be the one-year period beginning on October 1, 2005.

(g) **EFFECT OF DEATH OF PERSON MAKING ELECTION WITHIN TWO YEARS OF MAKING ELECTION.**—If a person making an election under this section dies before the end of the two-year period beginning on the effective date of the election, the election is void and the amount of any reduction in retired pay of the person that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the voided election if the deceased person had died after the end of such two-year period.

(h) **APPLICABILITY OF CERTAIN PROVISIONS OF LAW.**—The provisions of sections 1449, 1453, and 1454 of title 10, United States Code, are applicable to a person making an election, and to an election, under this section in the same manner as if the election were made under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be.

(i) **ADDITIONAL PREMIUM.**—The Secretary of Defense shall prescribe in regulations pre-

miums which a person electing under this section shall be required to pay for participating in the Survivor Benefit Plan pursuant to the election. The total amount of the premiums to be paid by a person under the regulations shall be equal to the sum of—

(i) the total amount by which the retired pay of the person would have been reduced before the effective date of the election if the person had elected to participate in the Survivor Benefit Plan (for the same base amount specified in the election) at the first opportunity that was afforded the member to participate under chapter 73 of title 10, United States Code;

(ii) interest on the amounts by which the retired pay of the person would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable; and

(iii) any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

(B) Premiums paid under the regulations shall be credited to the Department of Defense Military Retirement Fund.

(C) In this paragraph, the term "Department of Defense Military Retirement Fund" means the Department of Defense Military Retirement Fund established under section 1461(a) of title 10, United States Code.

AMENDMENT NO. 3467

The PRESIDING OFFICER. The question is on agreeing to the second-degree amendment, No. 3467, offered by the Senator from Nevada.

Mr. WARNER. Mr. President, I urge adoption of the second-degree amendment.

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

The amendment (No. 3467) was agreed to.

AMENDMENT NO. 3315, AS MODIFIED

The PRESIDING OFFICER. The question now is on agreeing to the first-degree amendment.

Mr. WARNER. No objection.

The PRESIDING OFFICER. Without objection, the first-degree amendment, as modified, is agreed to.

The amendment (No. 3315) was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, we have worked with the Senator from Louisiana for many hours today on this amendment. There was an article written, and I joke with the Senator from Louisiana. She was the feature of a veterans publication. They had a picture of her with her sleeves rolled up, muscles showing: "Military Mary."

MARY LANDRIEU is someone who looks out for the military. And I call her, joke with her, and ask her: How is "Military Mary" doing? She is very proud of this name she has picked up. Tonight is an indication of why she deserves that name. She has been outstanding in her advocacy for American

veterans. This agreement we have here tonight indicates she is not only a good advocate for the military but a very fine Senator.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, just one word, now that we have adopted the Landrieu amendment. Chairman WARNER and I used to have the privilege of having Senator LANDRIEU on the Armed Services Committee. We saw firsthand what a tigress she is and was relative to military matters. She is no longer on our committee, and we do miss her, indeed. But she brings and displays that fervor here on the floor frequently. We thank her for her tenacity. Talk about tenacity, she has a full supply of it. We commend and congratulate her.

Mr. WARNER. Mr. President, reference was made to the hard work Senator LANDRIEU performed on this amendment. Indeed, I was witness to that. But it did bring back a fond memory to me. In the period during the war in Vietnam, there was a very colorful and strong chairman in the House Armed Services Committee named Eddie Hebert from New Orleans, LA, and a gentleman who worked very closely with him, named Moon Landrieu. They were quite a team. They did a great deal working together for the men and women of the U.S. military.

When reference was made to Senator LANDRIEU's accomplishments, I am sure she would agree with me that the teachings of her distinguished father and the former chairman of the House Armed Services Committee have vested in her a lot of wisdom about military matters.

I also recognize the work done by Senators ENSIGN and SNOWE. I have been working with both of them over a period of time. Senator ENSIGN and Senator SNOWE each have put in previous pieces of legislation which basically covered this same subject. In the course of the past 48 hours, those two Senators have been working in collaboration with Senator LANDRIEU in an effort to get the Senate to take the action that we just took on that amendment. So I thank the Senator from Maine and the Senator from Nevada for their work.

As veterans look to the action taken by the Senate, they can decide for themselves on the work done by these Senators, and all Senators, because there was a unanimous vote on this amendment. I think we fulfilled our obligation to that very important class of individuals, the veterans; and particularly in this case, this provides benefits for the widows primarily—there are a few remaining spouses—but basically the widows who are at a critical time in their life and there is need for special consideration as it relates to personal finances. So I thank the Presiding Officer and I yield the floor.

Ms. SNOWE. Mr. President, I rise today in support of the Landrieu-

Snowe amendment because it corrects an injustice being visited upon the survivors of our servicemembers killed in action and military retirees under the current military Survivor Benefit Plan, or SBP.

As the program currently operates, the widows or widowers of those who have "borne the battle" receive an annuity equal to 55 percent of the servicemember's retirement pay. That is, until they turn 62. At that time, under current law, a surviving spouse's SBP benefits must be reduced either by a Social Security offset, or a reduction in payments to 35 percent of retired pay—a drop of almost 40 percent—simply because they have reached the age of 62.

For example, let's take the widow of a Navy chief petty officer or E-7 who had served 20 years before retiring. Before she reaches 62, this widow will receive \$786 per month, but on her 62nd birthday, that benefit drops to only \$500 per month—a loss of \$2,432 per year.

For a retired O-5, say a Marine Corps lieutenant colonel, the widow's benefit would drop by \$6,960 a year as soon as she turns 62. That is quite a birthday gift.

But the inequities don't stop there. For example, the military Survivor Benefit Plan does not measure up to the federal Survivor Benefit Plan in terms of benefits paid to survivors. Survivors of federal civilian retirees under the original Civil Service Retirement System receive 55 percent of their spouse's retired pay for life—with no drop in benefits at age 62. Under the newer Federal Employee Retirement System, survivors still receive 50 percent of retired pay for life, again with no drop at age 62.

Mr. President, yet another reason that we should adopt this legislation is that members of the military pay more than their share of Survivor Benefit Plan program costs, as compared to their federal civilian counterparts.

Originally, the Congress intended the government to subsidize 40 percent of the cost of military Survivor Benefit Plan premiums—similar to the government's contribution to the federal civilian plan. Over the last several decades, however, there has been a significant decline in the government's cost share, and Department of Defense actuaries advise that the government subsidy is now down to less than 20 percent. This means that military retirees are now paying more than 80 percent of program costs from their retired pay versus the intended 60 percent.

Contrast this to the federal civilian SBP, which has a 52 percent cost share for those under the Civil Service Retirement System and a 67 percent cost share for those employees, including many of our own staff, under the Federal Employees Retirement System. While it is true that there are differences between the civilian and military premium costs, with federal civilians paying more, it is also true that

military retirees generally retire earlier than their federal civilian counterparts, and as a result, pay premiums for many more years.

This amendment will raise, over a 3½-year period, the percentage of the retirement annuity received by the survivor from 35 percent to 55 percent after age 62. During the first year, fiscal year 2005, an open enrollment period will be held to allow new enrollees to sign up for the program in order to reduce retired pay outlays by increasing deductions of SBP premiums from retired pay, thus offsetting part of the cost of the survivor benefit increase.

Beginning on Oct. 1, 2005, the age-62 SBP annuity would increase to 40 percent of retired pay, followed by additional increases to 45 percent on April 1, 2006, 50 percent on April 1, 2007 and 55 percent on April 1, 2008 after which all survivors would receive the 55 percent of the annuity.

Once again, I ask my colleagues to support our Nation's military widows and widowers. In the National Defense Authorization Act of 2001, we included a Sense of the Congress on increasing the military SBP annuity. This year, we have a chance to carry out this intent by enacting this important measure, and I ask my colleagues to join with me in support of this legislation.

Mr. WARNER. Mr. President, I think we are ready to do a package of amendments, if I could get the attention of the ranking member.

AMENDMENTS NOS. 3414, AS MODIFIED; 3280, AS MODIFIED; 3355, AS MODIFIED; 3220; 3373, AS MODIFIED; 3459, AS MODIFIED; 3311, AS MODIFIED; 3476; 3477; 3478; 3479; 3480; 3481; 3342, AS MODIFIED; 3482; 3483; AND 3484

Mr. President, I send a series of amendments to the desk which have been cleared by myself and the ranking member. Therefore, I ask unanimous consent that the Senate consider those amendments en bloc, the amendments be agreed to, and the motions to reconsider be laid upon the table. Finally, I ask unanimous consent that any statements relating to any of these individual amendments be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. No objection.

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

The amendments were agreed to, as follows:

AMENDMENT NO. 3414, AS MODIFIED

At the end of title XI, insert the following:  
**SEC. 1107. REPORT ON HOW TO RECRUIT AND RETAIN INDIVIDUALS WITH FOREIGN LANGUAGE SKILLS.**

(a) FINDINGS.—Congress makes the following findings:

(1) The Federal Government has a requirement to ensure that the employees of its departments and agencies with national security responsibilities are prepared to meet the challenges of this evolving international environment.

(2) According to a 2002 General Accounting Office report, Federal agencies have shortages in translators and interpreters and an overall shortfall in the language proficiency levels needed to carry out their missions



which has adversely affected agency operations and hindered United States military, law enforcement, intelligence, counterterrorism, and diplomatic efforts.

(3) Foreign language skills and area expertise are integral to, or directly support, every foreign intelligence discipline and are essential factors in national security readiness, information superiority, and coalition peacekeeping or warfighting missions.

(4) Communicating in languages other than English and understanding and accepting cultural and societal differences are vital to the success of peacetime and wartime military and intelligence activities.

(5) Proficiency levels required for foreign language support to national security functions have been raised, and what was once considered proficiency is no longer the case. The ability to comprehend and articulate technical and complex information in foreign languages has become critical.

(6) According to the Joint Intelligence Committee Inquiry into the 9/11 Terrorist Attacks, the Intelligence Community had insufficient linguists prior to September 11, 2001, to handle the challenge it faced in translating the volumes of foreign language counterterrorism intelligence it collected. Agencies within the Intelligence Community experienced backlogs in material awaiting translation, a shortage of language specialists and language-qualified field officers, and a readiness level of only 30 percent in the most critical terrorism-related languages that are used by terrorists.

(7) Because of this shortage, the Federal Government has had to enter into private contracts to procure linguist and translator services, including in some positions that would be more appropriately filled by permanent Federal employees or members of the United States Armed Forces.

(b) REPORT.—In its fiscal year 2006 budget request, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives and the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, a plan for expanding and improving the national security foreign language workforce of the Department of Defense as appropriate to improve recruitment and retention to meet the requirements of the Department for its foreign language workforce on a short-term basis and on a long-term basis.

#### AMENDMENT NO. 3280

At the appropriate place, insert the following:

#### SEC. . ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) IN GENERAL.—Section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is amended by striking “2003” and inserting “2005”.

(b) PAYMENT OF COSTS.—Section 802 of the National Energy Conservation Policy Act (42 U.S.C. 8287a) is amended by inserting “, water, or wastewater treatment” after “payment of energy”.

(c) ENERGY SAVINGS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended to read as follows:

“(2) The term ‘energy savings’ means a reduction in the cost of energy, water, or wastewater treatment, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—

“(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

“(B) the increased efficient use of existing energy sources by cogeneration or heat re-

covery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

“(C) the increased efficient use of existing water sources in either interior or exterior applications.”.

(d) ENERGY SAVINGS CONTRACT.—Section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)) is amended to read as follows:

“(3) The terms ‘energy savings contract’ and ‘energy savings performance contract’ mean a contract that provides for the performance of services for the design, acquisition, installation, testing, and, where appropriate, operation, maintenance, and repair, of an identified energy or water conservation measure or series of measures at 1 or more locations. Such contracts shall, with respect to an agency facility that is a public building (as such term is defined in section 3301 of title 40, United States Code), be in compliance with the prospectus requirements and procedures of section 3307 of title 40, United States Code.”.

(e) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read as follows:

“(4) The term ‘energy or water conservation measure’ means—

“(A) an energy conservation measure, as defined in section 551; or

“(B) a water conservation measure that improves the efficiency of water use, is life-cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.”.

(f) REVIEW.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and administrative obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, including the identification of additional qualified contractors, and energy efficiency services covered. The Secretary shall report these findings to Congress and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.

(g) EXTENSION OF AUTHORITY.—Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act, shall be deemed to have been entered into pursuant to such section 801 as amended by subsection (a) of this section.

#### AMENDMENT NO. 3355, AS MODIFIED

On page 280, after line 22, insert the following:

#### SEC. 1068. CLARIFICATION OF FISCAL YEAR 2004 FUNDING LEVEL FOR A NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY ACCOUNT.

For the purposes of applying sections 204 and 605 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004 (division B of Public Law 108-199) to matters in title II of such Act under the heading “NATIONAL INSTITUTE OF STANDARDS AND TECH-

NOLOGY” (118 Stat.69), in the account under the heading “INDUSTRIAL TECHNOLOGY SERVICES”, the Secretary of Commerce shall make all determinations based on the Industrial Technology Services funding level of \$218,782,000 for reprogramming and transferring of funds for the Manufacturing Extension Partnership program and shall submit such a reprogramming or transfer, as the case may be, to the appropriate committees within 30 days after the date of the enactment of this Act.

#### AMENDMENT NO. 3220

(Purpose: To repeal the authority of the Secretary of Defense to recommend that installations be placed in inactive status as part of the recommendations of the Secretary during the 2005 round of defense base closure and realignment)

At the end of subtitle B of title XXVIII, add the following:

#### SEC. 2814. REPEAL OF AUTHORITY OF SECRETARY OF DEFENSE TO RECOMMEND THAT INSTALLATIONS BE PLACED IN INACTIVE STATUS DURING 2005 ROUND OF DEFENSE BASE CLOSURE AND REALIGNMENT.

Section 2914 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) is amended by striking subsection (c).

#### AMENDMENT NO. 3373, AS MODIFIED

At the end of subtitle C of title III, add the following:

#### SEC. 326. REPORT REGARDING ENCROACHMENT ISSUES AFFECTING UTAH TEST AND TRAINING RANGE, UTAH.

(a) REPORT REQUIRED.—(1) The Secretary of the Air Force shall prepare a report that outlines current and anticipated encroachments on the use and utility of the special use airspace of the Utah Test and Training Range in the State of Utah, including encroachments brought about through actions of other Federal agencies. The Secretary shall include such recommendations as the Secretary considers appropriate regarding any legislative initiatives necessary to address encroachment problems identified by the Secretary in the report.

(2) It is the sense of the Senate that such recommendations should be carefully considered for future legislative action.

(b) SUBMISSION OF REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit the report to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate.

(c) PROHIBITION ON GROUND MILITARY OPERATIONS.—Nothing in this section shall be construed to permit a military operation to be conducted on the ground in a covered wilderness study area in the Utah Test and Training Range.

(e) COMMUNICATIONS AND TRACKING SYSTEMS.—Nothing in this section shall be construed to prevent any required maintenance of existing communications, instrumentation, or electronic tracking systems (or the infrastructure supporting such systems) necessary for effective testing and training to meet military requirements in the Utah Test and Training Range.

#### AMENDMENT NO. 3459, AS MODIFIED

At the end of subtitle C of title X, add the following:

#### SEC. 1022. REPORTS ON MATTERS RELATING TO DETAINMENT OF PRISONERS BY THE DEPARTMENT OF DEFENSE.

(a) REPORTS REQUIRED.—Not later than 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the population of persons held by the Department of

Defense for more than 45 days and on the facilities in which such persons are held.

(b) **REPORT ELEMENTS.**—Each report under subsection (a) shall include the following:

(1) General information on the foreign national detainees in the custody of the Department on the date of such report, including the following:

(A) The best estimate of the Department of the total number of detainees in the custody of the Department as of the date of such report.

(B) The countries in which such detainees were detained, and the number of detainees detained in each such country.

(C) The best estimate of the Department of the total number of detainees released from the custody of the Department during the one-year period ending on the date of such report.

(2) For each foreign national detained and registered with the National Detainee Reporting Center by the Department on the date of such report the following:

(A) The Internment Serial Number or other appropriate identification number.

(B) The nationality, if available.

(C) The place at which taken into custody, if available.

(D) The circumstances of being taken into custody, if available

(E) The place of detention.

(F) The current length of detention.

(G) A categorization as a civilian detainee, enemy prisoner of war/prisoner of war, or enemy combatant.

(H) Information as to transfer to the jurisdiction of another country, including the identity of such country.

(3) Information on the detention facilities and practices of the Department for the one-year period ending on the date of such report, including for each facility of the Department at which detainees were detained by the Department during such period the following:

(A) The name of such facility.

(B) The location of such facility.

(C) The number of detainees detained at such facility as of the end of such period.

(D) The capacity of such facility.

(E) The number of military personnel assigned to such facility as of the end of such period.

(F) The number of other employees of the United States Government assigned to such facility as of the end of such period.

(G) The number of contractor personnel assigned to such facility as of the end of such period.

(c) **FORM OF REPORT.**—Each report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(d) **APPROPRIATE COMMITTEES OF CONGRESS DEFINED.**—In this section, the term “appropriate committees of Congress” means—

(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

#### AMENDMENT NO. 3311, AS MODIFIED

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

#### SEC. \_\_\_\_ . **REPORT ON OFFSET REQUIREMENTS UNDER CERTAIN CONTRACTS.**

Section 8138(b) of the Department of Defense Appropriations Act, 2004 (Public Law 108-87; 117 Stat. 1106; 10 U.S.C. 2532 note) is amended by adding at the end the following new paragraph:

“(4) The extent to which any foreign country imposes, whether by law or practice, offsets in excess of 100 percent on United States suppliers of goods or services, and the impact

of such offsets with respect to employment in the United States, sales revenue relative to the value of such offsets, technology transfer of goods that are critical to the national security of the United States, and global market share of United States companies.”.

#### AMENDMENT NO. 3476

(Purpose: To provide for appropriate coordination in the preparation of the management plan for contractor security personnel)

On page 188, beginning on line 17, strike “Congress” and all that follows through line 20, and insert “the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a plan for the management and oversight of contractor security personnel by Federal Government personnel in areas where the Armed Forces are engaged in military operations. In the preparation of such plan, the Secretary shall coordinate, as appropriate, with the heads of other departments and agencies of the Federal Government that would be affected by the implementation of the plan.”.

#### AMENDMENT NO. 3477

(Purpose: To provide for appropriate coordination in the preparation of the report on contractor performance of security, intelligence, law enforcement, and criminal justice functions, and to add other congressional committee recipients for the report)

On page 192, after line 22, insert the following:

(c) **COORDINATION.**—In the preparation of the report under this section, the Secretary of Defense shall coordinate, as appropriate, with the heads of any departments and agencies of the Federal Government that are involved in the procurement of services for the performance of functions described in subsection (a).

(d) **ADDITIONAL CONGRESSIONAL RECIPIENTS.**—In addition to submitting the report under this section to the congressional defense committees, the Secretary of Defense shall also submit the report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

#### AMENDMENT NO. 3478

(Purpose: To provide for appropriate coordination in the preparation of the report on contractor security in Iraq, and to add other congressional committee recipients for the report)

On page 246, between lines 7 and 8, insert the following:

(d) **COORDINATION.**—In the preparation of the report under this section, the Secretary of Defense shall coordinate with the heads of any other departments and agencies of the Federal Government that are affected by the performance of Federal Government contracts by contractor personnel in Iraq.

(e) **ADDITIONAL CONGRESSIONAL RECIPIENTS.**—In addition to submitting the report on contractor security under this section to the congressional defense committees, the Secretary of Defense shall also submit the report to any other committees of Congress that the Secretary determines appropriate to receive such report taking into consideration the requirements of the Federal Government that contractor personnel in Iraq are engaged in satisfying.

#### AMENDMENT NO. 3479

(Purpose: To provide for the space posture review to be a joint undertaking of the Secretary of Defense and the Director of Central Intelligence)

On page 249, line 16, strike “(d)” and insert the following:

(4) The reports under this subsection shall also be submitted to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(d) **JOINT UNDERTAKING WITH THE DIRECTOR OF CENTRAL INTELLIGENCE.**—The Secretary of Defense shall conduct the review under this section, and submit the reports under subsection (c), jointly with the Director of Central Intelligence.

(e) \*\*\*

#### AMENDMENT NO. 3480

(Purpose: To add the Select Committee on Intelligence and the Permanent Select Committee on Intelligence of the House of Representatives as recipients of the report of the panel on the future of military space launch)

On page 252, beginning on line 10, strike “and the congressional defense committees” and insert “, the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives”.

#### AMENDMENT NO. 3481

(Purpose: To add the Director of Central Intelligence as an approving official for Department of Defense assistance to Iraq and Afghanistan military and security forces in certain cases)

On page 269, line 16, before the period at the end insert “and, in any case in which section 104(e) of the National Security Act of 1947 (50 U.S.C. 403-4(e)) applies, the Director of Central Intelligence”.

#### AMENDMENT NO. 3342, AS MODIFIED

(Purpose: To require a plan on the implementation and utilization of flexible personnel management authorities in Department of Defense laboratories)

At the end of title XI add the following:

#### SEC. 1107. **PLAN ON IMPLEMENTATION AND UTILIZATION OF FLEXIBLE PERSONNEL MANAGEMENT AUTHORITIES IN DEPARTMENT OF DEFENSE LABORATORIES.**

(a) **PLAN REQUIRED.**—The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense for Personnel and Readiness shall jointly develop a plan for the effective utilization of the personnel management authorities referred to in subsection (b) in order to increase the mission responsiveness, efficiency, and effectiveness of Department of Defense laboratories.

(b) **COVERED AUTHORITIES.**—The personnel management authorities referred to in this subsection are the personnel management authorities granted to the Secretary of Defense by the provisions of law as follows:

(1) Section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2721), as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398 (114 Stat. 1654A-315)).

(2) Section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 5 U.S.C. 3104 note).

(3) Such other provisions of law as the Under Secretaries jointly consider appropriate for purposes of this section.

(c) **PLAN ELEMENTS.**—The plan under subsection (a) shall—

(1) include such elements as the Under Secretaries jointly consider appropriate to provide for the effective utilization of the personnel management authorities referred to in subsection (b) as described in subsection (a), including the recommendations of the

Under Secretaries for such additional authorities, including authorities for demonstration programs or projects, as are necessary to achieve the effective utilization of such personnel management authorities; and

(2) include procedures, including a schedule for review and decisions, on proposals to modify current demonstration programs or projects, or to initiate new demonstration programs or projects, on flexible personnel management at Department laboratories

(d) **SUBMITTAL TO CONGRESS.**—The Under Secretaries shall jointly submit to Congress the plan under subsection (a) not later than February 1, 2006.

#### AMENDMENT NO. 3482

(Purpose: To express the sense of the Senate regarding the return of members of the Armed Forces to active service upon rehabilitation from service-related injuries)

On page 112, between the matter following line 5 and line 6, insert the following:

#### **SEC. 574. SENSE OF THE SENATE REGARDING RETURN OF MEMBERS TO ACTIVE DUTY SERVICE UPON REHABILITATION FROM SERVICE-RELATED INJURIES.**

(a) **FINDINGS.**—Congress makes the following findings:

(1) The generation of young men and women currently serving on active duty in the Armed Forces, which history will record as being among the greatest, has shown in remarkable numbers an individual resolve to recover from injuries incurred in such service and to return to active service in the Armed Forces.

(2) Since September 11, 2001, numerous brave soldiers, sailors, airmen, and Marines have incurred serious combat injuries, including (as of June 2004) approximately 100 members of the Armed Forces who have been fitted with artificial limbs as a result of devastating injuries sustained in combat overseas.

(3) In cases involving combat-related injuries and other service-related injuries it is possible, as a result of advances in technology and extensive rehabilitative services, to restore to members of the Armed Forces sustaining such injuries the capability to resume the performance of active military service, including, in a few cases, the capability to participate directly in the performance of combat missions.

(b) **SENSE OF THE SENATE.**—It is the sense of the Senate that—

(1) members of the Armed Forces who on their own initiative are highly motivated to return to active duty service following rehabilitation from injuries incurred in their service in the Armed Forces, after appropriate medical review should be given the opportunity to present their cases for continuing to serve on active duty in varied military capacities;

(2) other than appropriate medical review, there should be no barrier in policy or law to such a member having the option to return to military service on active duty; and

(3) the Secretary of Defense should develop specific protocols that expand options for such members to return to active duty service and to be retrained to perform military missions for which they are fully capable.

#### AMENDMENT NO. 3483

(Purpose: To authorize, and authorize the appropriation of, \$18,140,000 for military construction at Navy Weapons Station, Charleston, South Carolina, for the construction of a consolidated electronic integration and support facility to house the command and control systems engineering and design work of the Space and Naval Warfare Systems Center, Charleston, and to provide offsets, including the elimination of the authorization of appropriations of \$10,358,000 for military construction at Charleston, South Carolina, for the construction of a readiness center for the Army National Guard)

On page 305, in the table preceding line 1, insert after the item relating to Naval Station Newport, Rhode Island, the following new item:

|                 |                                    |              |
|-----------------|------------------------------------|--------------|
| South Carolina. | Naval Weapons Station, Charleston. | \$18,140,000 |
|-----------------|------------------------------------|--------------|

On page 305, in the table preceding line 1, strike the amount identified as the total in the amount column and insert “\$833,718,000”.  
On page 307, line 8, strike “\$1,825,576,000” and insert “\$1,843,716,000”.

On page 307, line 11, strike “\$676,198,000” and insert “\$694,338,000”.

On page 314, line 7, strike “\$2,493,324,000”, as previously amended, and insert “\$2,485,542,000”.

On page 315, line 3, strike “\$863,896,000” and insert “\$856,114,000”.

On page 322, line 15, strike “\$371,430,000” and insert “\$361,072,000”.

#### AMENDMENT NO. 3484

(Purpose: To add an amount for a bed-down initiative to enable the C-130 aircraft of the Idaho Air National Guard to be the permanent carrier of the SENIOR SCOUT mission shelters of the 169th Intelligence Squadron of the Utah Air National Guard)  
On page 24, between lines 9 and 10, insert the following:

#### **SEC. 133. SENIOR SCOUT MISSION BED-DOWN INITIATIVE.**

(a) **AMOUNT FOR PROGRAM.**—The amount authorized to be appropriated by section 103(1) is hereby increased by \$2,000,000, with the amount of the increase to be available for a bed-down initiative to enable the C-130 aircraft of the Idaho Air National Guard to be the permanent carrier of the SENIOR SCOUT mission shelters of the 169th Intelligence Squadron of the Utah Air National Guard.

(b) **OFFSET.**—The amount authorized to be appropriated by section 421 is hereby reduced by \$2,000,000, with the amount of the reduction to be derived from excess amounts provided for military personnel of the Air Force.

Mr. WARNER. I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### AMENDMENT NO. 3280

Mr. BINGAMAN. Mr. President, I am pleased to support this amendment, which I have cosponsored with the Senator from Oklahoma, to extend the Energy Savings Performance Contract program through the end of fiscal year 2005.

Our amendment is urgently needed to stem the damage being done to a very successful program that brings private

sector expertise, and private sector financing, to efficiency projects that reduce the Federal Government's energy use, and energy costs.

Since the 1970's Federal Government agencies have been setting an example for the Nation on how to reduce energy waste and save money by improving their energy efficiency—spending \$2.3 billion less for energy in FY2000 than in FY1985. One of the reasons for this success is the availability of Energy Savings Performance contracts, ESPCs. These contracts offer a way to make energy savings improvements at Federal facilities at no cost to the Government, by leveraging private capital. The Department of Defense has been a leader in the use of Energy Savings Performance contracts.

Under the ESPC authority enacted in 1992, private sector companies enter into contracts with Federal agencies to install energy savings equipment and make operational and maintenance changes to improve building efficiency. The company pays all of the up-front costs for making the energy efficiency improvements and guarantees the agency savings through the term of contract. The energy service company then recovers its investment, over time, by receiving a portion of the agency's energy cost savings.

Since 1992, this program has brought nearly \$1.1 billion in private sector investments to Federal agencies, resulting in hundreds of millions of dollars in permanent savings to the taxpayers. The ESPC program has the support of a broad and diverse coalition of businesses, environmental groups and labor—including the U.S. Chamber of Commerce, U.S. PIRG, and the Teamsters.

Unfortunately, the statutory authority for the ESPC program expired at the end of FY2003. As a result of the program lapse, over \$300 million in energy efficiency projects have been halted nationwide. Pending contacts are in limbo along with over 3,000 new jobs associated with these projects. Although I and others have made several efforts to extend the program, these efforts have been unsuccessful, primarily because the Congressional Budget Office assigns a cost to the program, unlike the Office of Management and Budget which considers the program to be budget neutral.

While the debate over proper scoring of the program goes on, the loss of new business and experienced personnel has put this program into crisis. With each passing week, the benefits and potential of ESPCs are bleeding away. At a time of high energy costs, high deficits, and high unemployment, Congress should act as soon as possible to extend ESPC authority.

I thank the managers of the bill for accepting this short-term extension amendment. I also pledge to continue working with Senator INHOFE and other supporters of the ESPC program to enact a permanent extension of this valuable efficiency program.

I ask unanimous consent that a letter from Secretary Abraham expressing administration support for the ESPC Program be printed in the RECORD.

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

THE SECRETARY OF ENERGY,  
Washington, DC, April 8, 2004.

Hon. PETE DOMENICI,  
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Administration strongly supports enactment, as soon as possible, of legislation to extend the authority for Federal agencies to enter into Energy Savings Performance Contracts (ESPCs).

Congress established the ESPC program in 1992 as an innovative way to improve the Government's energy efficiency by harnessing private-sector resources to fund necessary energy-efficient improvements. However, authority to enter into new ESPC contracts expired on October 1, 2003. A short-term, one-year reauthorization would allow Federal agencies to continue making investments in energy efficiency that save energy and money and help agencies meet Federal energy conservation goals.

The Administration continues to support long-term reauthorization of the ESPC program as part of the comprehensive energy legislation currently under consideration in Congress. The legislation itself extending ESPC authority is considered budget neutral and does not require additional resources, as the Office of Management and Budget classifies all budget authority and outlays for ESPCs as absorbing discretionary resources. However, ESPCs actually save the government money, because the upfront costs of ESPC efficiency improvements are recovered through the energy savings that result. Moreover, payments to the contractors are contingent upon realizing a guaranteed stream of future cost savings.

Improved energy efficiency and conservation of Federal facilities is an important component of this Administration's commitment to the cost-effective use of public dollars and protection of the environment. The Administration urges Congress to act quickly to extend the authorization of this important program.

Sincerely,

SPENCER ABRAHAM.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I am prepared to enter into a unanimous consent agreement with the distinguished Senator from Nevada.

Mr. President, I ask unanimous consent that all pending amendments be withdrawn, with the exception of the following: Daschle, No. 3409, as amended; Leahy, No. 3387, which will have a second degree by Senator LEAHY or designee; and a series of amendments which have been cleared by both managers; I further ask consent that at 9:30 tonight the Senate proceed to a vote in relation to the Daschle amendment No. 3409, with no second degrees in order to the amendment prior to the vote; provided further that following the disposition of the Daschle amendment, the Senate vote in relation to the Leahy amendment No. 3387. I further ask consent that following the disposition of the Leahy amendment, and the disposition of the cleared amendments, the bill be read a third time and the

Senate proceed to a vote on passage of the bill, with no intervening action or debate.

Before the Chair rules, I ask unanimous consent that the votes occur in reverse order than listed above.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding that, first of all, it will be the Daschle amendment No. 3409, as amended.

Mr. WARNER. That is correct. If I failed to read it, it is as amended.

Mr. REID. And that the Leahy amendment No. 3387—we all know Senator LEAHY is going to offer a second-degree amendment to the underlying amendment.

Mr. WARNER. That is correct. It is in the script.

Mr. REID. And also, I say to the Senator, I want to make sure we would have the Daschle vote second and the Leahy vote first.

Mr. WARNER. If that is the preference, so granted.

Mr. REID. That would be for the convenience of the Democratic leader. I would also think it would be appropriate to have 2 minutes evenly divided prior to each vote. I would ask unanimous consent that the distinguished chairman of the committee allow the modification of his unanimous consent request as I have outlined it.

Mr. WARNER. I concur in the modification.

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

Mr. WARNER. I thank the Chair.

Mr. LEAHY. Mr. President, will the Senator yield, not to speak on my amendment but to call it up and offer the second degree now?

The PRESIDING OFFICER. Without objection, the Daschle second degree No. 3468 is agreed to.

The amendment (No. 3468) was agreed to.

AMENDMENT NO. 3485 TO AMENDMENT NO. 3387

Mr. LEAHY. Mr. President, I ask that amendment No. 3387 be called up, and I send to the desk a second-degree amendment on behalf of myself and Mr. CORZINE.

The PRESIDING OFFICER. The clerk will report the second-degree amendment.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself and Mr. CORZINE, proposes an amendment numbered 3485 to amendment No. 3387.

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

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

The amendment is as follows:

(Purpose: To direct the Attorney General to submit to the Committee on the Judiciary of the Senate all documents in the possession of the Department of Justice relating to the treatment and interrogation of individuals held in the custody of the United States)

At the appropriate place, insert the following:

# SEC. \_\_\_\_ REQUEST FOR DOCUMENTS AND RECORDS.

The Attorney General shall submit to the Committee on the Judiciary of the Senate all documents and records produced from January 20, 2001, to the present, and in the possession of the Department of Justice, describing, referring or relating to the treatment or interrogation of prisoners of war, enemy combatants, and individuals held in the custody or under the physical control of the United States Government or an agent of the United States Government in connection with investigations or interrogations by the military, the Central Intelligence Agency, intelligence, antiterrorist or counterterrorist offices in other agencies, or cooperating governments, and the agents or contractors of such agencies or governments.

Mr. LEAHY. I thank the distinguished manager and yield the floor.

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

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

Mr. BENNETT. Mr. President, as the debate on the Defense authorization bill began, I announced my intention to offer an amendment to that bill with respect to the nuclear penetrator, or, as it is known around here, the RNEP. I have been dissuaded from offering that amendment by the arguments of some of my friends who insist it is unnecessary because it would be simply a statement of existing law. I wanted to be sure that was the case, and therefore I sought assurances from both the Department of Energy and the Department of Defense. I have handed the letters from those two Departments to my friend from Michigan. I ask if I could reclaim those letters so I might quote from them.

Mr. LEVIN. That is a fair request.

Mr. BENNETT. Linton F. Brooks, who is the Administrator of the National Nuclear Security Administration, wrote me on June 15, and he says the following things:

... let me state unequivocally this Administration has no current plans or requirements to conduct an underground nuclear test.

That is important to understand, that the administration has no plans to conduct an underground nuclear test of any kind.

With respect to RNEP, he says:

... I know you are concerned that the ongoing RNEP study could lead to the resumption of underground nuclear testing. The RNEP study will not require an underground nuclear test.

That is a very firm, unequivocal statement.

He goes on to talk about possibilities, and he says:

Should the President support, and the Congress approve, full-scale engineering development of RNEP, the Administration does not intend to conduct a nuclear test. From the beginning, we have operated under the assumption that resuming testing to certify RNEP is not an option. ...

Those are firm assurances from the Department of Energy. But I wanted to be sure this was not just Ambassador Linton Brooks' attitude, so I had a conversation with Paul Wolfowitz at the Department of Defense. Dated June 23, he sent me a letter reaffirming what Administrator Brooks had said and makes it clear that the Department of Defense agrees there will be no nuclear test with respect to RNEP under the current administration.

So I am heartened by these assurances I have received from the Department of Defense and the Department of Energy that there is no plan or requirement to conduct an underground nuclear explosive test of any kind, and I accept these assurances. But here in the Congress I have those to whom I look for guidance on these matters. I want to be sure that should some future administration decide to change the policy that has been outlined by the Bush administration, that the present law would hinder future administrations from conducting these same tests without there being a vote of Congress; particularly with respect to RNEP, that there would be no underground nuclear test without a congressional vote.

I have asked the Senator from Arizona, who is an expert on these matters, if he would agree. I also discussed it with the Senator from Michigan, who is the ranking member on the Armed Services Committee.

If I may, Mr. President, I ask the Senator from Arizona, Mr. KYL, if he agrees that under current law, a vote from Congress would have to occur before a test could be conducted on RNEP?

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I answer the Senator from Utah, yes, I agree Congress would have to vote before a test could be conducted.

Mr. BENNETT. I thank the Senator from Arizona, Mr. President.

I would now like to address the same question to the Senator from Michigan, with his great background in the area of law concerning this.

Does the Senator from Michigan agree that under current law, a vote

from Congress would have to occur before a test could be conducted for RNEP?

Mr. LEVIN. Yes, I, too, agree that Congress would have to vote before a test could be conducted.

Mr. BENNETT. I thank the Senator from Michigan. I thank the Senator from Arizona.

On the basis of their assurances, along with the written assurances I have received from this administration—two Departments speaking—I will not offer my amendment.

Mr. President, I now ask unanimous consent those two letters be printed in the RECORD.

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

DEPARTMENT OF ENERGY, NATIONAL  
NUCLEAR SECURITY ADMINISTRATION,

Washington, DC, June 15, 2004.

Hon. ROBERT BENNETT,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR BENNETT: Thank you for taking the time to meet with me on June 3, 2004, to discuss your concerns regarding the Robust Nuclear Earth Penetrator (RNEP) study and underground nuclear testing at the Nevada Test Site (NTS). I appreciate your concerns and I hope to address them in this letter.

First, let me state unequivocally this Administration has no current plans or requirements to conduct an underground nuclear test. The Stockpile Stewardship Program is working today to ensure that America's nuclear deterrent is safe, secure and reliable. Currently there are no issues of sufficient concern to warrant a nuclear test. I certainly understand the concerns you and your constituents in Utah have with nuclear testing at the Nevada Test Site. However, I believe it is critical to maintain a readiness capability at the NTS to conduct such a test in the future if called for by the President of the United States, in order to ensure the safety and/or reliability of a weapon system. Therefore, I believe it is important for us to work together to ensure that the NNSA test readiness program continues to make safety a top priority.

Furthermore, I know you are concerned that the ongoing RNEP study could lead to the resumption of underground nuclear testing. The RNEP study will not require an underground nuclear test. Should the President support, and Congress approve, full-scale engineering development of RNEP, the Admin-

istration does not intend to conduct a nuclear test. From the beginning, we have operated under the assumption that resuming testing to certify RNEP is not an option and for that reason, more than any other, the RNEP study is only looking at two existing weapon systems, the B-61 and the B-83. Both are well-proven systems with an extensive test pedigree from the 1970s and 80s. I would be happy to work with you and the Senate Armed Services Committee to address your concerns on this sensitive matter.

If you have any further questions or concerns, please do not hesitate to contact me or C. Anson Franklin, Director, Office of Congressional, Intergovernmental and Public Affairs at (202) 586-8343.

Sincerely,

LINTON F. BROOKS,  
Administrator.

DEPUTY SECRETARY OF DEFENSE,  
Washington, DC, June 23, 2004.

Hon. ROBERT BENNETT,  
U.S. Senate, Dirksen Senate Office Building,  
Washington, DC.

DEAR SENATOR BENNETT: I understand that you have concerns about the Department's plans to study options for a Robust Nuclear Earth Penetrator (RNEP) that would give the United States the capability to threaten hardened, deeply buried targets in hostile nations. Specifically, you have raised concerns that the development of such a system could require the resumption of underground nuclear testing.

I want to assure you that the Administration has no plans to conduct an underground nuclear test associated with the development of RNEP. As National Nuclear Security Administration Administrator Linton Brooks recently wrote to you, "the RNEP study is only looking at two existing weapon systems, the B-61 and B-83. Both are well-proven systems with an extensive test pedigree from the 1970s and 80s."

If RNEP were to move from its current study phase to development, such plans would be part of the Administration's annual budget request to Congress. The Administration's intentions concerning underground nuclear testing during RNEP development, if different from our current intentions, would be explicit in that request. Congress would have the opportunity at that time to debate and pass judgment on those plans.

Thank you for the opportunity to address your concerns about the Department's development of RNEP. If I can be of further assistance, I hope you will let me know.

Sincerely,

PAUL WOLFOWITZ.

## NOTICE

***Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.***

ORDERS FOR THURSDAY, JUNE 24,  
2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Thursday, June 24. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for

their use later in the day, and the Senate proceed to executive session for the consideration en bloc of Calendar Nos. 715 and 731, the nomination of John Danforth to be Representative to the United Nations.

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

## PROGRAM

Mr. FRIST. Mr. President, tomorrow we will begin the day with the consideration of the nomination of our former colleague to be Representative to the United Nations. The nomination will require a little debate but then will not need a vote. We will also consider judicial nominations tomorrow. Therefore, rollcall votes will occur throughout the day.

Also, Chairman STEVENS will be here to begin consideration of the Defense Appropriations bill. We hope to begin that bill and finish that legislation prior to the recess. Therefore, Senators can expect a busy day with rollcall votes.

ADJOURNMENT UNTIL 10 A.M.  
TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 11:45 p.m., adjourned until Thursday, June 24, 2004, at 10 a.m.

## CONFIRMATIONS

Executive nominations confirmed by the Senate June 23, 2004:

## THE JUDICIARY

JUAN R. SANCHEZ, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

WALTER D. KELLEY, JR., OF VIRGINIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA.