United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, FIRST SESSION

Vol. 149 WASHINGTON, FRIDAY, NOVEMBER 7, 2003 *No. 161*

Senate

The Senate met at 9:30 a.m. 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:

God of might and miracles, You are our protection and defense. You are our shelter and savior. You give daily victories to those who trust You. Because of You, our Nation continues to be blessed, for Your greatness is beyond understanding.

Thank You for Your kindness, for being slow to anger and full of constant love. Meet the needs of our Senators as they seek to serve humanity. Be near to them as they weigh important evidence and guide their thoughts.

Show us Your compassion and hear our prayers. Protect all who love Your name and fill us with Your joy. We pray this in Your merciful name. 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 will immediately resume consideration of the Internet tax moratorium bill. Last night, many colleagues remained in the Chamber to debate the underlying legislation and an amendment that we hope will be offered shortly—as a matter of fact, most of the same Senators are already here this morning and are prepared to resume this important debate. We will proceed with that shortly.

We do want to take a moment to comment on the schedule. Today, it is my expectation to have votes on the Internet tax moratorium and to finish that bill. The tax moratorium expired last week, and I believe it is important for us to work through any amendments and vote on passage of that bill today. With the cooperation of all Senators, we will be able to complete our work on this bill at an early hour this afternoon.

It would also be my intent to begin consideration of the Commerce-Justice-State appropriations bill as soon as possible. We must continue to make steady progress on these appropriation bills in order to complete our work by November 21. Senators can expect votes throughout the morning and afternoon as we work through the end of the Internet tax bill.

UNANIMOUS CONSENT REQUEST—H.R. 2799

Mr. FRIST. Mr. President, I ask unanimous consent that at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to the consideration of H.R. 2799, the Commerce-Justice-State appropriations bill.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Mr. President, reserving the right to object, I ask the majority leader—we have, of course, Senator HOLLINGS, the ranking member of the subcommittee, who has asked, at what time do you propose going to that, today or at some other time?

Mr. FRIST. The plan would be to go to it after we finish the Internet tax bill. So we would like to go to that bill today. If it is very late, of course, we will start early Monday morning.

Mr. REID. I respectfully say to my distinguished friend that we are not going to finish the Internet tax bill today. I guess we can finish it by taking it off the floor. On our side there are a significant number of amendments, and we know there are some on your side. Simply, I ask the leader what time does he propose, in effect, that we have had enough talk on the Internet tax bill, because it is not going to be completed today.

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

Mr. FRIST. Again, people were here very late last night. I encourage the managers to do everything humanly possible to finish the Internet tax bill. If, after aggressive work, we cannot do that, then we can make a decision. By the end of today, I would like to lay down the Commerce-Justice-State appropriations bill. If that is the case, I would plan on going to that on Monday. We can talk about the appropriate time. For us to finish our work, we have to keep moving, and it is important to lay down that bill today.

Mr. REID. Mr. President, I say to the majority leader we want to cooperate. We have tried to do that on these appropriations bills, and we will cooperate on Commerce-State-Justice. But until there is some determination made when we are going to go off the Internet tax, I am going to object.

The PRESIDENT pro tempore. Objection is heard.

Mr. MCCAIN. Will the majority leader yield?

Mr. FRIST. I am happy to yield.

Mr. MCCAIN. Mr. President, I point out that we went on to the Internet tax moratorium bill last night with the anticipation of amendments being proposed and votes starting this morning—stacked votes. That is what we usually do on a Thursday evening. Whether that is a good idea or a bad one, it is a very common practice. We had anticipated at least three amendments and then stacked votes this morning and moving forward with the bill.

Then, I was told later in the evening there would be one amendment that would be proposed and we would stack it for this morning; and not too late last night, the sponsors of the amendment said they were going to file the amendment and debate it this morning.

With all due respect, that is not the way we usually do business here. We tell people what we are going to do and go with their word and move forward. I think we need to get this done because the Internet tax moratorium has expired. If we don't want the Internet tax moratorium to prevail, that is a decision to be made by the body. We should make the decision. I hope the majority leader will stick with his comments. There are not that many items of dispute on the Internet tax moratorium. It has been debated on several occasions in past years. So I hope relevant amendments—and I don't think there are more than two or three, to be honest—are offered and we can move forward with those with a reasonable debate time and dispose of this today, understanding that all Members have the problem of scheduling and want to leave.

So I urge the cooperation of all Members so we can dispose of important amendments and move forward. I see my colleague from North Dakota who is ready to speak. I wish he had been here last night to speak. We could have done an amendment and debated it. Instead, we put it off for this morning, which I hope will make comments more abbreviated so we can move to the substance of the amendment and passage of the bill.

I thank the leader and I appreciate his commitment to try to get this done today.

Mr. FRIST. Mr. President, let me close this out and then we can turn to the bill. I ask all of our colleagues to spend the appropriate time and do our best to cooperate to finish this important bill, which I tried very hard to finish last week with the understanding that we would bring it up this week and we would finish it this week. We cannot point fingers on either side of the aisle because there are challenges on both sides of the aisle. I ask this in order for us to finish the Nation's business.

Last night on the floor—I know we have the Syria accountability bill and Military Construction, which we are going to get. The problem is that we have to finish the business we have on the floor. We have to continue the appropriations process as we go forward, and we cannot do it unless people come together and understand there is an urgency that requires cooperation.

I go back to my original comments. I understand there is objection to going to Commerce-Justice-State. I will continue to discuss that as the day goes forward. I would like to lay that down today at some point.

UNANIMOUS CONSENT REQUEST—H.J. RES. 76

Mr. FRIST. Mr. President, I ask unanimous consent that H.J. Res. 76, which is at the desk, be read a third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Reserving the right to object.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, in response to the distinguished chairman of the Commerce Committee, people worked here late last night. No one should criticize anyone for not being here later. I left around 10 o'clock. There may have been a quorum call, but very few. There were good, strong, substantive speeches given on this issue. No one can be criticized, especially my friend from North Dakota, for not being here last night. He was here all during the day yesterday and offered a number of amendments to the Agriculture appropriations bill. My friend from North Dakota might be criticized for some things, but one of them is certainly not that he doesn't work hard. He works as hard as anyone in the Senate.

I also say to the distinguished majority leader, I did last night spend a few minutes indicating and asking why we are not doing the Syria accountability bill and Military Construction. It is obvious—and we should stop feigning—we have a problem here. The problem is there has been a decision made to spend 30 hours next week on a circus talking about judges—168 to 4.

I am not going to object to this, other than to say let's be realistic here. There are games being played, and we don't want to be part of those games. We want to cooperate. Military Construction should pass now, rather than getting into next week when there is some effort to stop it. That can be passed by a unanimous consent agreement right now.

The PRESIDENT pro tempore. Is there objection?

Mr. DORGAN. Will the Senator from Nevada yield?

Mr. REID. I don't have the floor.

The PRESIDENT pro tempore. Is there objection to the request?

Mr. DORGAN. Reserving the right to object.

The PRESIDENT pro tempore. The Senator from North Dakota reserves the right to object.

Mr. DORGAN. I object.

The PRESIDENT pro tempore. Objection is heard.

RESERVATION OF LEADER TIME

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

MAKING FURTHER CONTINUING APPROPRIATIONS FOR FISCAL YEAR 2004

Mr. REID. Mr. President, I ask unanimous consent that H.J. Res. 76, which is at the desk, be read a third time and passed and the motion to reconsider be laid upon the table.

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

The joint resolution (H.J. Res. 76) was read the third time and passed.

INTERNET TAX NONDISCRIMINATION ACT

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 150, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 150) to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

Pending:

McCain Amendment No. 2136, in the nature of a substitute.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, I hope we can get things done here. There is so much to be done. I said last night, and I spoke from the heart, people in Nevada at our military bases, Fallon and Ellis, need this Military Construction bill passed. I don't know why we are not going to do it today. If it is brought up next Monday or Tuesday,

nothing is going to happen on it, so let's get that done.

The Syria Accountability bill—I understand what is going on here. There is an effort made so there will be a vote Monday night on Syria Accountability because there is a time limit on it. If that is the case, fine. Remember, this is an important piece of legislation that requires our immediate attention. I don't think we should be doing things that take away for 1 minute our going into Syria's accountability, supporting the Hezbollah, and all the other activities they do that simply are not appropriate.

We are in a situation where we have bills that need to be passed and conference reports that need to be approved. It is not going to happen for reasons I don't understand.

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

Mr. REID. I will be happy to yield.

Mr. DORGAN. Mr. President, my colleague from Arizona, I know, did not intend to think that if I were here last night, I would have advanced the cause of his legislation. I have no amendment to offer to the legislation. I had an opportunity yesterday to speak on several amendments. I think he probably inartfully described his angst about last evening. I didn't cause this legislation to be delayed. I am sure he knows that.

Aside from that, I wonder if the Senator from Nevada will tell me about the urgency of legislation on the floor. The majority leader expresses an interest in moving this Senate along on legislation we need to get done. I am pretty unimpressed with the plea to do that when we understand that next week we are going to find nearly 2 days taken in a carnival situation with judgeships, when we have approved 98 percent of the judges who have been sent to us by the White House.

Now, in the middle of next week, as we try to finish this session, we are told we are going to have 30 hours, or take the better part of 2 days, to sit here around the clock to talk about the several judges we have not confirmed. I ask the Senator from Nevada if that seems to him like we have an urgent situation when somebody is going to take 30 hours out of the middle of next week and move off to have a 30-hour discussion on judgeships.

I am pretty unimpressed with the plea for cooperation and expedited procedures on these issues as long as somebody is going to take nearly 2 days out of the middle of next week to do something that has nothing to do with moving appropriations bills.

As I ask the question, I wish to make an additional comment. I am an appropriator as well. I am not very impressed with what has happened. We were supposed to have done the appropriations bills and finished by October 1. We have been off and on appropriations bills. Look, if this is a priority, let's get on appropriations bills and stay on appropriations bills. That is what we ought to do. Isn't that the case, I ask my friend from Nevada?

Mr. REID. I will be happy to respond to my friend's question. As I indicated earlier, to my knowledge, no one works harder in the Senate than the Senator from North Dakota. He is an appropriator and authorizer, understanding from his long years in Congress, both in the House and the Senate, that the last few weeks and days of a legislative session can become very intense. That is why I am at a total, absolute loss to understand how we could do this. We have been told; we heard it on the news—I went home last night and my wife said it was on the news at 6 o'clock Wednesday night until 12 o'clock Thursday night, we are going to be on the Senate floor listening to a discussion of what bad legislators we are because we haven't approved 100 percent of the judges the President has requested—168 to 4—and we have been told they are going to bring up another failed nominee, Priscilla Owen, next week.

I understand they are also going to bring up a woman by the name of Kuhl from California and a woman by the name of Brown from California. I don't know if this is an effort to try to somehow embarrass the two Democratic—

Mr. MCCAIN. Parliamentary inquiry, Mr. President.

Mr. REID.—Senators from California or what the reason might be.

The PRESIDENT pro tempore. Does the Senator yield for a parliamentary inquiry?

Mr. REID. For a parliamentary inquiry? I will be happy to do that, without losing my right to the floor. Yes.

The PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I have a parliamentary inquiry: Wouldn't rule XVIIII 1(b) begin to apply concerning proceedings while legislation is before the Senate?

The PRESIDENT pro tempore. That is correct. Under the procedures of the Senate, there would be a warning issued to Senators speaking on matters other than the business before the Senate in the first 3 hours.

Mr. REID. Mr. President, I appreciate that very much. I appreciate my friend from Arizona bringing that to my attention. What I am going to talk about for a while is the Internet tax problem. Internet tax is a difficult situation, of course. It is something with which we need to deal. We understand there is some confusion as to what we are really dealing with. Some believe it has something to do with sales tax. This legislation does not. It deals with access.

It is a very important issue, but it seems to me this matter could be resolved in a matter of minutes. I am told the Presiding Officer's amendment, in effect, would extend the present law for a couple years. It is my understanding the distinguished Senator from Alaska has suggested this be extended for 2 years and, if I am not mistaken, there are others who believe it should be extended for 2 years.

I believe that should happen. I hope we will extend this for a couple years and then during that period of time make a determination as to whether the legislation that is now before the Senate should be implemented. I understand that.

Also, one of the real problems we have is this schedule, which makes it very difficult to deal with this legislation. My friend from Arizona suggested we deal with relevant amendments. This is not going to happen in this present atmosphere. There will certainly be efforts made to offer not only relevant amendments, but, I would assume, maybe some nongermane amendments. I don't know that to be the case, but I assume so because we have so few opportunities to amend different pieces of legislation as they come through.

On appropriations bills, we have been cooperating the best we can. As I indicated last night, we have done everything we can to make sure we did not have amendments that were offered to appropriations bills that would slow down the process. We have worked very hard in doing that.

I am not going to talk for a long time this morning.

I have no intention of interfering this morning with people's schedules. I know there are a lot of schedules that we have to move along. I want to do that. People have airplane schedules to meet on Friday. We were told yesterday that there would not be anything after 12 today. At least people on our side made arrangements that that would, in fact, be the case. If there is some change, we need to know about that.

I am happy that we got the CR passed. I look forward at a later time today to cooperate and agree to bringing forth Commerce-State-Justice. We want to do that at the appropriate time. Until there is some decision made on how long we are going to be involved on the Internet tax situation, we are not going to be able to give that consent.

Finally, responding to my friend from North Dakota in a very brief way, what is taking place here is something that I have never seen in the many years—more than two decades—I have served in the Congress, that we would have in the late days of a legislative session this carnival, as the Senator from North Dakota referred to it—this circus, as I referred to it—and that is what the American people will think of it.

The PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I believe the Senators from Tennessee and Delaware have an amendment filed. We are ready to consider that amendment or other amendments, if Senators have amendments that they would bring them to the floor so we can move forward with legislation.

I mention to my friend from North Dakota, who is an articulate and passionate defender of his point of view on the Internet tax issue, the reason why I mentioned his absence last night was I meant he would have contributed a good deal to the debate and discussion given his many years of involvement in this issue, which I have always enjoyed, not only on that issue but on numerous others.

So I would ask if our colleagues would file their amendments, bring them forward, as well as amendments that may be applicable.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDENT pro tempore. The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, let me weigh in here by acknowledging the mistake we made in the Commerce Committee. In light of that statement, let me first commend our colleague from Oregon, Senator WYDEN. His intent is good. We followed it. We supported it in the Commerce Committee. We made certain that the Internet was allowed to expand and progress without any tax burden. In that light, we passed the temporary moratorium. The intent of the Commerce Committee, when we reported this measure that is now before us, was to make permanent that moratorium with respect to individual taxes.

What occurred in reporting was that we realized there was a certain language difficulty there. The fact is that the CBO today cannot schedule or account for that language on the budgetary impact. We knew that shortly after the reporting. It was all reported out on a verbal vote. We said this is going to the Finance Committee. They have tax experts and they will clean up our act for us and get the intent of the full committee and the Congress to continue and make permanent this moratorium.

The fact is, under the present language, the moratorium extends not just to the individual consumer, but it goes the entire way down the pipeline as a tax exemption, thereby invading the power of the States to tax or not tax; thereby becoming, as the Senator from Tennessee, Mr. ALEXANDER, says, an unfunded mandate. So now we have before us not the intent of the Congress at all.

I recently was in China, and I can tell you we do not have to worry about trying to control the Internet. It is not with taxes that the Chinese are trying to control the Internet and its usage, expansion, and its progress. On the contrary, they are trying by law to control it, and they cannot. That cat is out of the bag and it is going to grow.

The fundamental problem is just what the Senator from Tennessee has spotted. We have now invaded States and the locals and their taxing power, and that is not right. Right is right and wrong is wrong, and we made a mistake. Over the horizon, some of these corporate America giants are piggybacked. They said, oh, now look at what we have. If we can get in on this kind of extension, we will do away with some $4 billion to $8 billion in taxes. Of course, they are not passing it on to the consumer. It has nothing whatsoever to do with the expansion or the progress and success of the Internet. That is what we have confronting us.

In that light, the Senator from Delaware, Mr. CARPER, and the Senator from Tennessee, Mr. ALEXANDER, have gotten together an amendment that the distinguished Chair has joined in, and this Senator from South Carolina has joined in, so that we can pass this bill and extend it. That is what we all want to do. We like the present law and that is what we in the Commerce Committee thought we were doing, we were protecting consumers by extending the present law to make it permanent. We could then send that over to the House side, and if we can send that to the House, we can dispose of this knotty problem and move on to more important legislation.

I thank the distinguished Senator from North Dakota for handling this bill. Once again, I wish to acknowledge the leadership of Senator WYDEN from Oregon. He has led us on this Internet effort for a long period of time. He has made absolutely certain that the Internet continues to progress and succeed. We cannot come in now and tell the States how to tax and what to tax and not to tax.

We are not trying to give a tax cut to corporate America. We want to make sure there is not a tax increase to consumers on the Internet. That is what the present law did until it expired a few days ago, and that is what ought to be extended and made permanent.

I thank the Senator from North Dakota for handling this measure and again commend my colleague on the committee, Senator WYDEN, for his leadership.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I am going to be brief. I have appreciated the distinguished Senator from South Carolina working with me on this over the years.

The distinguished Senator from South Carolina is absolutely right. The committee bill did the job right. The committee bill kept in place the technological neutrality that we have established over the years—the Senator from South Carolina, Senator STEVENS, who has now left the floor, Chairman MCCAIN, and others. The reason we did that years ago is that we did not have technological neutrality. The Internet was subject to taxes that were not subject to other areas, such as the snail mail delivery of papers.

What has happened, however, is under the substitute that is being offered by the distinguished Senator from Tennessee, Mr. ALEXANDER, we get away from the competitive neutrality that the distinguished Senator from South Carolina has been advocating.

I want to be very specific about how that is being done, because I think a lot of Members believe that if they vote for the proposal by the Senator from Tennessee that it is somehow a safe vote, that all they are doing is continuing the status quo and it is really kind of an innocuous approach. It is not a safe vote. It is a vote to increase taxes.

I want to be very specific in explaining how that is the case. What has happened as a result of changes in technology over the last few years is you now have, in a number of jurisdictions, DSL—Internet access through DSL being taxed but Internet access through cable modems not being taxed. That is what has happened as a result of the changes in technology and the various changes in government policy. So you already have been moving away from the competitive neutrality we have sought with respect to this issue.

Let me repeat that. Today, Internet access through DSL is being taxed in a number of jurisdictions and Internet access through cable modem can't be taxed anywhere.

Unfortunately, what would happen under the proposal of the Senator from Tennessee is that you would make it easier to continue that competitive disadvantage and, particularly under the proposal of the Senator from Tennessee, it would be easier to tax wireless Blackberry services.

I am of the view that with 391 separate taxes on telecommunications administered in 10,000 different jurisdictions, people across America who have these Blackberrys, which have wireless Internet access, would be subject to scores of new taxes.

So I say to colleagues who are looking at this issue and thinking that somehow the idea of a 2-year proposal is kind of an innocuous safe haven and really not a tax increase—I ask them to think about what it is going to mean for Blackberry users across the country.

These are wireless devices. In a number of jurisdictions where Internet access is obtained through DSL, those services are already being taxed. That would be expanded under the 2-year alternative.

What I would like us to do is what I believe we sought to do 5 years ago when Senator HOLLINGS, Senator MCCAIN, and others got together, and that is to ensure strict neutrality with respect to technology. The Internet wouldn't get a preference; the Internet wouldn't be hurt. The problem now that wireless users are facing with respect to DSL will be compounded if this 2-year alternative goes forward. I hope my colleagues will reject it for the reasons I outlined this morning.

The PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Mr. President, shortly the sponsors will be proposing an

amendment. In the meantime, I ask to speak as in morning business for 4 minutes.

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

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

The PRESIDING OFFICER. The Senator Nevada.

Mr. REID. Let me say about this bill, no matter the merit of it, I know people feel very strongly about it. The Senator from Tennessee, who was here in the Chamber a few minutes ago, the Senator from Ohio, Mr. VOINOVICH, the Senator from Virginia, Mr. ALLEN, the distinguished Senator from Oregon, Mr. WYDEN—they have strong feelings about this. Their views do not coincide. I know how strong their feelings are.

But this legislation, with all due respect to the distinguished chairman of the Commerce Committee, isn't going to go anywhere today or Monday or Tuesday. I think there should be some effort made to resolve the issue. I am a member of the Commerce Committee. I don't understand all the issues, but I understand the issues on this floor and nothing is going to happen.

I would say to the majority that if they are looking for votes today, they would be better off looking for votes to pass the most important piece of legislation that I see that we could vote on quickly, and that would be the vote on the conference report dealing with Military Construction. We could vote on that. We could have a vote with debate equally divided with 5 minutes each. We could pass it. We could go to the Syria Accountability Act. We agreed last night to reduce our time. There are 90 minutes. We have agreed to take one hour half each and divide it up, as we indicated last night, several different ways. It seems to me we could do that, and we could be out of here by 12 o'clock after 2 very important votes.

Let me tell you what the problem is. There is an effort made so we have something to do on Monday and Tuesday. I say to everyone that as a result of the carnival which is going to be started at 6 o'clock on Wednesday, nothing is going to happen Monday and Tuesday of any significance. There may be a vote on the Syria Accountability Act because it would be an easy vote to get up. They may bring up Military Construction, and they may say, Isn't it too bad that the minority, the Democrats, aren't allowing us to pass Military Construction. But remember: I have offered numerous times over several days to take this up by unanimous consent. So all the pleas of sorrow and concern next week about our not taking care of our military officers around the country certainly will speak volumes because it simply is without any foundation because we can do that right here.

We are on the Internet tax bill. One of the things we need to talk about on this Internet tax bill is the importance of judges. Judges enforce these laws. We have been involved in passing out of this Senate 168 judges. We have turned down four. If the Internet tax measure is worth talking about, why don't we just move a little bit to the 30 hours which is going to begin next Wednesday and start talking about judges today? That is fine. I don't see any reason why we should not do that.

We can talk about the record that was set and that we have the lowest vacancy rate in the judiciary in some 15 years. Is it necessary because we have the lowest rate in some 15 years to spend 30 hours—2 days of the Senate's time—talking about judges in the circus atmosphere that will be there? It is all planned. It is going to be quite a show. It has all been laid out in the press. They are going to have all 51 Republicans here, and that way it will be very easy to discern whether or not there is a quorum present.

I am gathering my thoughts.

We will have a lot of time to spend on Internet tax.

Mr. MCCAIN. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will come to order.

Mr. REID. Thank you very much. I appreciate very much bringing the Senate to order.

Mr. MCCAIN. I am sorry to say the Senate is still not in order.

The PRESIDING OFFICER. The Senate will be in order.

Mr. REID. Mr. President, the point is if there needs to be a discussion on judges, we don't have to wait until Wednesday at 6 o'clock. We can start talking right now on this legislation because judges have to enforce the law. It is a law we are talking about. They have to do it on a trial level and they have to do it on an appellate level.

We have given this President 98 percent of the judges he wants—98 percent of the judges he wants. People talk about the Constitution. We can talk about the Constitution also. The majority makes these statements that a filibuster is a brand new thing; it has never happened with judges; isn't it a terrible thing this is happening in the Senate. Of course, it is without foundation. There is no truth to it. Filibusters have taken place on previous occasions, and it will take place again long after we are gone.

To think we have to wait until Wednesday to talk about judges—we don't have to wait until Wednesday. We can talk now. This is a complicated piece of legislation. Don't you think we are going to need judges to interpret the law? Of course we are. The record we have is pretty good. Do you think the advise-and-consent clause of the Constitution meant every judge the President suggested to us we just approve them? Would the President be happy if we had 100 percent of his judges? How about 99 percent or 99.5 percent? Ninety-eight percent isn't good enough. It is not good enough, so now we are going to spend 30 hours talking about why it shouldn't be 98 percent, it should be 100 percent. I don't know what the proper ratio is the President wants.

I am just giving everyone a little idea that we don't have to wait until Wednesday at 6 o'clock to talk about judges. We will talk about them now. I am proud of what we have done here in the Senate dealing with judges.

I am glad Miguel Estrada was not confirmed. He wouldn't answer the questions. He wouldn't allow us to look at his memoranda when he was at the Solicitor's Office.

I am glad we did not approve Priscilla Owen who the President's own attorney, Mr. Gonzales, said was not a good judge when he served with her in the Texas Supreme Court.

I am glad that twice we did not approve William Pryor from Alabama who is an embarrassment to the State of Nevada and this country and shouldn't be a judge.

We have approved 168 judges. That is how many we have approved.

Mr. DORGAN. Mr. President, will the Senator from Nevada yield for a question?

Mr. REID. I would be happy to yield for a question.

Mr. DORGAN. I wonder if perhaps next week when the other side wishes to take 30 hours in the middle of the week to talk about the handful of judges—I believe the four who have not been confirmed by the Senate—I wonder if perhaps we should not take the time next week to talk individually about the 168 we have confirmed. Perhaps we ought to go through each one and talk about all 168.

If time is not the issue—if the majority leader says time is urgent to talk about all of these other bills but in the middle of next week they will use 30 hours to come to the floor and talk about the 4 who have not been confirmed—perhaps we ought to take 60 hours to talk about the 168 we have confirmed.

Let us move on the things that matter now and scuttle the 30 hours next week and this 30-hour discussion of the handful of judges who have not been approved. That doesn't make any sense to me.

Mr. MCCAIN. Will my friend from Nevada yield for another parliamentary inquiry?

Mr. REID. In just a minute.

The Internet bill which we are talking about here on the Senate floor is an important piece of legislation. I was present last night and listened to the statements of the Senator from Oregon. The Senator from Oregon understands legislation. He understands the importance of this Internet tax bill. He understands the definition of access. He understands what unfunded mandates mean, which was talked about by the Senator from Tennessee at such great length. I think it is important we understand this Internet tax bill. It deals with some very important issues. It is a bill that seeks to protect the

Internet access from taxation. As the lines between the Internet and the media continue to blur, there is some concern the law could lead to States losing some of their existing tax base over time. For example, some long distance telephone traffic is now carried on the Internet. Movies, videos, and music programming can be downloaded onto the Internet as well as being viewed over cable and broadcast media.

I say to everyone within the sound of my voice someone needs to interpret this law. If we pass something here, we will need someone to interpret this law.

I know this is Friday morning and there is a lot to do. But I simply wanted everyone to know this sham, this scam, this circus, this carnival that is going to begin on Wednesday at 6 o'clock is just as I have described it. What we are going to do, as the Senator from North Dakota indicated, if you want to talk about 4 judges, or maybe add 2 more or 6, is we will talk about 168. We are happy to do that.

I know I could talk a lot longer. I understand the Pastore rule. I have a lot of stuff which I could talk about—the Internet tax, and weave in the judges, but as kind of a relief to everybody, I am going to sit down for the time being.

Mr. MCCAIN. Mr. President, I thank the Senator from Nevada, who understands parliamentary procedures as well as anyone.

There are some discussions going on about some agreement that might be reached on this issue with some of my colleagues. I hope we can make progress on that.

I yield the floor.

Mr. DORGAN. Mr. President, I have not spoken on this issue this morning. This is a very important issue. I have been a supporter of the moratorium. I have supported the initial moratorium and the extension of the moratorium and will support again a moratorium. As far as I am concerned, it could be permanent if the proposition is, let us not tax the connection to the Internet. That was the presumption from the start. Let us not retard the growth of this industry. Let us not allow States to create some special tax that could be discriminatory or punitive with respect to the Internet itself.

Having said that, it is very important we create a definition that is appropriate. We have a current law. That current law could just be extended. Some of my colleagues say, if you just extend that and do not do anything about the circumstance with DSL, then you have an unfairness. That is something I understand and I am certainly willing to deal with that. But if we do not deal with the issue of how you interpret or how you describe what it is you are exempting, you can have serious financial problems. We are talking about billions of dollars' worth of problems for State and local governments.

When we passed this moratorium out of the Commerce Committee, my colleague, Senator HOLLINGS, was absolutely correct. We passed it out, I believe, 31 to 0. But we did it by saying we understand the definition of what is going to be exempted is not yet right. There is great controversy about it. So we will move this bill to the Senate but will work on solving the problem of the definition and what it means and its consequences before we get to the Senate. We tried very hard to do that but regrettably that has not been done. I want people to understand the framework in which this comes to the floor. Yes, the Commerce Committee passed it 31 to 0, but with the caveat that the definition of what is exempt is not yet solved or at least not yet agreed. So between then and now we have tried hard to see if we could fix that. At this point, it is not yet fixed.

Mr. BURNS. If the Senator will yield on that point, 9 times out of 10, whenever we get in trouble in this body it is in dealing with definitions up front. That is our problem now.

I know they are trying to work out some way over there to define certain parts of this, but there has to be something between the amendment pending and where we want to go. We are all in agreement that in this industry, when the moratorium was first put on—to allow this industry, this industry that was a baby industry, to build out—what we did was right. The second time we extended it was the right thing to do. We have seen an explosion in an industry.

There are, however, some sections that are discriminatory. There were some loopholes found by the States. So we have an inequitable situation due to definition.

I hope the parties can work this out to the satisfaction of the intent of the Commerce Committee when we passed it the first time, when we extended it the second time, and now when we want to extend it another time.

Maybe status quo is not exactly right. But nonetheless, it is something we have to work on. The Senator from North Dakota and the Senator from South Carolina have a point that we have not worked on the definition and how it will be determined or defined in the taxing entities of the States, or even, for that matter, counties and cities.

I appreciate the Senator from North Dakota allowing me this time.

Mr. DORGAN. Mr. President, I agree with that view expressed by Senator BURNS.

Let me continue by saying definitions are everything. The reason the States are very concerned is if the definition is not correct—that is, if it is not specific in exactly what Congress proposes—we could see billions and billions of dollars lost to the State and local governments in revenue they otherwise would have expected.

We have a situation where we have a moratorium that expired. The moratorium ought to be extended. I was prepared to extend it permanently if we could find a definition that would be acceptable. That has not yet proven to be the case. Some are now discussing, and I was in some discussions a few moments ago, about a shorter term extension, perhaps 4 years, and use the definition that exists in current law in the moratorium that expired November 1 and try to fix the position with respect to DSL, which is a problem. I don't know how this will come out, but we have a responsibility to try to get this right. We would not want to do something permanently that has a problem attached to it, that will be a growing problem for State and local governments.

Let me describe something that was in the newspaper recently because it tells the dilemma we face if we get this wrong. We have been moving in information technology from the old circuit switch telephone network to an Internet-based network. Whether we communicate by voice, e-mail, wireless, instant message, the data is being transmitted over the Internet in digital packets.

If anyone wonders what I mean, look at a story in the Minneapolis Star and Tribune. It is Quest Corporation announcing this past week that it will roll out an Internet-based telephone service in Minnesota. It describes that. That is the Internet-based service called VoIP, Voice Over Internet Protocol. They say the approach to moving this out over the Internet—that is, telephone service over the Internet—will save on regulatory expenses and other costs and break the regulatory logjam that exists. The article goes on to say:

> The Quest Internet phone service would also be exempt from salestax if Congress, as expected, extended and expands a tax ban on Internet access to include Internet telephone service.

You can see the consequences. If you do not understand exactly what you are doing and you have a definition that is not articulate and not focused exactly on what you intend to accomplish, we can have very significant consequences for State and local governments.

Let me end where I started by saying I happen to have supported both of the previous moratoriums, and I will support a moratorium now because I don't believe we want tax policy that retards the development of the Internet. I don't believe we want tax policy that in any way injures or interrupts the substantial expansion in technology and information technology that we have seen in a very short period of time.

However, even as we do this, let's make sure that we do not injure or provide significant problems for State and local governments because while we want to exempt the connection to the Internet, we did not want to, with an unfunded mandate as my colleague from Tennessee calls it, or some other approach, we begin preempting a retinue of State and local taxes that have

been legitimately allied to various kinds of services. It is not unusual to pay a tax on certain kinds of telephone services. It is not unusual. That is one of the methods by which State and local governments have developed a revenue base.

We described a very specific area that is off limits. Let's make sure that description is appropriate, fair, and specific relating to how the Congress intends this to work.

I know my colleague from California wishes to speak. I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from North Dakota.

Mr. President, I very much hope we do not pass the underlying bill today. I believe it is premature. In my 10 years in the Senate, I have never heard from more California cities, specifically 104 of them, indicating their concerns about what the underlying bill would do to the budgets of their cities.

Here in my hand are some of the letters. This issue has energized cities in my State like no other. City mayors are incensed that we would pass a law without knowing with certainty how it would impact local revenues.

I have received letters from the League of California Cities, which represents all of California's 478 cities, from county administrators, police officer associations, firefighter associations, all of whom are concerned about this bill—and I cannot answer their questions about it.

But, they understand the larger issue. They are telling us the bill contains language that threatens their ability to collect existing taxes on certain telecommunications services. And, again, I cannot answer these questions, and these questions cannot be answered on the floor of the Senate today. They are too complex.

This is precisely why the Carper-Alexander amendment is the most appropriate approach: extend the moratorium for another 2 years and do a study. Bring the cities together with the professionals, and see exactly what taxes are impacted by the underlying bill.

I want to take a moment to commend Senators ALLEN and WYDEN for their work and also to thank Senators MCCAIN and HOLLINGS for guiding the issue through the Commerce Committee.

I also know the minority and majority staff on the Commerce and Finance Committees have been working to provide the Senate with the information it needs to weigh the competing views, and I thank them. But the competing views are still there, and there are no answers for the cities.

Since we originally passed the Internet Tax Freedom Act, we knew this day would come, the day when we would need either to extend the tax moratorium or allow the temporary moratorium to expire.

California has a passionate interest in maintaining unfettered access to the Internet. We have a globally recognized concentration of high-tech and telecommunications firms. We provide much of the infrastructure required to gain access to the Internet and many of the services that make the Internet so useful. However, we have to make sure that maintaining tax-free access to the Internet does not inadvertently destroy the budgets of cities and counties throughout my State and the Nation. Many of them have come to rely on a variety of telecommunications services fees and taxes as an important part of their revenue base.

Now, I support the permanent extension of the Internet Tax Freedom Act, but if I had to vote today on it, I would have to vote no. I am a cosponsor of Senator WYDEN's original legislation that would make permanent the current moratorium. But if I had to vote today on the Allen-Wyden bill, I would vote no because a number of uncertainties have arisen and nobody can answer those uncertainties.

Additionally, as a letter circulating through the Senate today indicates, we have been told that we violate the Unfunded Mandates Act. I was here when that Act was passed in 1995. I voted for that Act. Now we hear from the Congressional Budget Office that the underlying bill would, in fact, create an unfunded mandate on States and local jurisdictions. I think we need to find out how and what can be done to prevent that from happening.

If this bill's definition of telecommunications services is interpreted in an overly broad way, as many of us think it may be, it will negatively impact local budgets. It will lead to the possibility of reduced preparedness in our firehouses and our police stations and less money for our schools, and it will do so at a time when States and cities face large budget deficits.

Right now, in San Diego, CA, a huge debate is going on as to whether the San Diego County firefighting forces are adequate; whether they have the vehicles, whether they have the training, whether they have the ability to really respond to fire conflagration. If we move ahead precipitously today, this bill will make that situation worse.

I must tell you, as a former mayor, these are my concerns. For San Francisco, the city in which I served, the bill's current definition of telecommunications services could lead to a loss of $30 million annually. San Francisco, as their experts compute, will lose $30 million of existing taxes if we pass this bill in its present form. That translates into 300 police and firefighters.

In the city of Pasadena, the mayor, Bill Bogaard, says this would cost his city $11.4 million. That is the legislation before this body today. Let me quote from his letter:

> By using vague language to include broadband Internet access under the moratorium, we fear that the bill will allow telephone and cable companies to use that protection to avoid paying local franchise or utility fees.

He goes on to state:

> It is our understanding that it was not the intent of the bill's sponsors to endanger local franchising authority, but the legislation has yet to be changed to correct these unintended consequences.

Mr. President, this is not the first time in this debate we have heard someone mention unintended consequences. The distinguished Senator from New Jersey, Mr. LAUTENBERG, mentioned last night that since this debate has started we have been hearing it from all of our mayors and State officials all across this great land.

I wish to quote from one more of the letters I have received from our mayors. This is from Judith Valles, the mayor of the City of San Bernardino, which was the focus of one of California's main wildfires. She wrote to me to point out, and I quote:

> Currently, 150 cities in California levy a utility users tax, or what is called a UUT, which in many cases includes telephone and cable television services. Utility users taxes provide a critical contribution to local discretionary revenue, on average 15 percent of general purpose revenues, making the utility users tax vital in helping fund critical city services, particularly public safety.

This comes from a mayor who is still dealing with the threat that her city faced due to the recent California wildfires. And why? Because we are afraid to step back and give the telecommunications industry and cities more time to work out a solution to this issue with which they can both live?

I appreciate Senator WYDEN's frustration that if we let the debate rage on too long, it will never end. I appreciate that sometimes you have to make a decision, and that if it is not perfect, you fix it along the way. But this is not one of those times.

If you run the risk of repealing taxes that are already in place, you unavoidably affect local budgets, and I am not willing to do that at this time. I believe people want their tax dollars used on the local level. They want better police. They want better fire protection. They want the emergency services for adequate protection, particularly at this point when America stands a risk from terror. And it makes no sense to rush to pass a bill when you have cities all across this country saying: Don't do it. It is going to inevitably impact what we now levy.

This will not affect the telecommunications companies because the Carper-Alexander amendment extends the current law with minor changes. Just extend the moratorium for 2 years, do the study, permit the parties to come together and work this out.

I do not think it is one Member's goal to undermine the existing tax base of local cities and counties across this great Nation in passing a permanent moratorium. We have never wanted to do that. We are told today that the underlying bill does, in fact, do that. So why—why—rush to pass it? My goodness.

I love my high-tech companies, but the cities and counties are where the people are, and they need police and fire and emergency services. In a day of cutbacks, it makes no sense, because we don't know what we are doing today—and to simply willy-nilly pass a bill that may well do that makes no sense. We then will have to shuffle around and find a way to correct it at some point in the future. In the meantime, budgets are upset all across the Nation. That is not good government, it is not good public policy, and it is not good legislation.

I am here to add my support and the support of 104 cities in California to the Carper-Alexander amendment. I would be most happy to offer my services in any way I can to work with the committee chair, the ranking member, and Senators WYDEN and ALLEN, to try to find a solution. It makes no sense to pass something without an adequate study and the reconciliation of the industries.

I remember when we were working out a solution to the taxation of cellular phone calls. At that time, we told the parties that we needed them to develop a mutually agreeable solution to the problem of how to tax mobile phone calls and then present it to Congress. The cellular industry and local governments did exactly that. We now have a cellular phone tax standard in place that most people can live with. It is my understanding that the cities and States would be comfortable with this same approach to Internet access taxes. That is the kind of approach I believe will make this debate much more productive.

The debate on this issue should not be centered on who is right and who is wrong. Unfortunately, that is where we are today. On one side we have the telecommunications industry saying the cities are overreacting to the impact this bill will have on their budgets. On the other side, we have the cities saying the telecommunications industry is seeking special, nearly unprecedented, tax treatment.

Why is it we would not want to give these two stakeholders time to put their heads together and bring Congress an agreement they can both live with?

Let me be clear: I want a permanent extension but not at the cost of laying off firefighters, police officers, and teachers.

Should the Carper-Alexander amendment not be adopted, I will offer my own amendment that simply strips out this confused language in the context of a permanent moratorium. While not a perfect solution to the complex problem we face, it is far better than forcing our cities and States to send out pink slips to public safety personnel. I am hoping it will not come to that. Cities and their technical experts have my attention. This is true throughout the rest of the United States.

I hope the Carper-Alexander amendment will be passed and that the moratorium will continue for 2 years so a study can be conducted and a reconciliation of conflicts within this legislation settled so that we can move ahead knowing we have not inadvertently decimated up to 15 percent of the tax base of local communities.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the letters which I have from cities around the State of California be printed in the RECORD.

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

CITY OF BURBANK,
OFFICE OF THE CITY COUNCIL,
Burbank, CA, September 12, 2003.

Re HR49 (Cox); SB52 (Wyden) and SB 150 (Allen)—Oppose.

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

DEAR SENATOR FEINSTEIN: I am writing on behalf of the City of Burbank to urge your opposition to provisions included in the ''Internet Tax Non-Discrimination Act of 2003'' that would modify the definition of ''Internet Access'' to include telecommunications services ''to the extent such services are used to provide Internet Access''. This expansion of the definition would result in a loss of badly needed revenues for California's cities and significantly affect our city's ability to provide essential services. This is particularly important during these tough economic times.

Currently 150 cities in California levy a utility users tax (UUT), which in many cases, including our city, includes telephone and cable television services. The UUT provides a critical contribution to local revenues (nearly 15% of general fund revenues); in fact, it is our third largest revenue source (behind sales tax and property tax), making the UUT vital in helping fund critical city services, particularly public safety. The City of Burbank, along with other cities, are already experiencing flat growth in the UUT due mostly to the intense competition between phone service providers, particularly cellular. Therefore, any additional reduction to our UUT (or any other revenue source for that matter) will have dire fiscal consequences.

The City of Burbank's UUT projection for Fiscal Year 2003–04 is $16.5MM which is needed to pay for essential safety and human services programs. Although it is difficult to segregate the impact of excluding the internet access portion of our UUT revenues, here are some examples as to what total UUT figure of $16.5MM can fund for one full year: Salaries plus benefits for 36 fire fighters; salaries plus benefits for 40 police officers; run our library program (salaries/benefits plus operating costs); run both the Daycamp/Summer Parks/Teen Program and the Organized Sports program (salaries/benefits plus operating costs); and run the Senior Nutrition Program, the Human Services Program, the Transportation Program, the Senior Recreation Program (salaries/benefits plus operating costs).

As you contemplate this limitation on local governments' ability to raise local revenue, it is essential to put this restriction in the context with other limitations California local governments currently face as we try to meet critical local service needs. Remember that over the past several decades, cities' control of discretionary revenue sources has been severely eroded by state actions.

With the passage of Proposition 13, the state was given control over the allocation of local property taxes. In the early 1990s, the state exercised this control diverting billions in dollars of local property taxes to meet the state obligation to fund schools. In the 2003–04 fiscal year alone, this shift is estimated to be a loss of $5.4 billion from cities, counties and special districts.

In addition, cities and counties are faced with a shortfall of Vehicle License Fee revenues in the current fiscal year due to the ''deferral'' of payment of $825 million in backfill owed until 2006. This will have a critical impact on the ability to provide local services during the current fiscal year. The utility users tax represents one of the few local revenue discretionary revenue sources with rates, exemptions and terms determined at the local level to conform to community interests and needs.

Although Burbank fully supports and recognizes the importance of fostering the development of the Internet and other new technologies, Congress must also recognize as it considers this legislation that cities in California face serious fiscal constraints at both the state and local level already.

We need your help to ensure that this legislation is amended to remove this detrimental expansion of the definition of ''Internet access.'' We look forward to working closely with you on this urgent matter.

Sincerely,

STACEY MURPHY,
Mayor.

CITY OF CONCORD,
OFFICE OF THE MAYOR,
Concord, CA, October 1, 2003.

Re S. 150—Internet Tax Non-Discrimination Act—Oppose/Amend.

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

DEAR SENATOR FEINSTEIN: The House has passed and the Senate is poised to pass legislation (H.R. 49/S. 150) that, according to the MultiState Tax Commission, will result in a loss of revenue to state and local governments of up to $8.75 billion annually by 2006, and could be even greater as right-of-way rents from non-tax franchise and access line fees are also lost.

In a report released September 24, the MultiState Tax Commission estimated that for every $1 billion these bills cost state and local governments, our local communities will lose: Almost 20,000 police officers; almost 20,000 firefighters; more than 27,000 hospital workers; almost 25,000 teachers; and more than 17,000 college instructors.

The legislation began as a simple extension of the Internet Sales Tax moratorium, which was scheduled to expire November 1, 2003. H.R. 49/S. 150 has been amended to make the tax moratorium permanent and to expand the types of services that cannot be taxed.

Services for accessing the Internet that are taxable or subject to franchise fees today—such as dial-up telephone service, DSL and cable Internet services—would be exempt from taxes and potentially free from franchise obligations.

Under current law, Internet access, ''does not include telecommunication services''. This bill would expand the definition of Internet access and thereby impose not only a permanent moratorium on Internet access fees but also on traditional telecommunications taxes.

I urge you to amend the bill to clarify that the moratorium does not apply to traditional telecommunication services.

Very truly yours,

MARK A. PETERSON,
Mayor.

CITY OF COVINA,
Covina, CA, October 21, 2003.

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

DEAR SENATOR FEINSTEIN: The City of Covina is writing to express our concerns with S. 150, the ''Internet Tax Non-Discrimination Act.'' We fear that the language of S. 150 will deprive municipalities nationwide of billions of dollars in tax and fee revenues in the years ahead and, in the meantime, will result in litigation and confusion. It has been our experience that some industry participants will use the language of S. 150 to avoid paying local telecommunications and utility taxes, as well as franchise fees and rights-of-way fees owed on infrastructure deployed in the public rights-of-way.

As currently worded, S. 150 poses a direct threat to two traditional, yet separate and distinct, municipal powers. These powers must be preserved. Municipal budgets are already strapped by the recession, reduced federal and state budgets, and the demands of homeland security. Local governments can not afford to be hamstrung still further to the point where vital municipal services are curtailed or eliminated altogether.

The first traditional municipal power that S. 150 threatens is the ability of local governments to impose telecommunications taxes or to apply local utility taxes to the provision of telecommunications services. Municipalities in many states are authorized to impose such taxes, and many municipalities currently rely on such taxes as a critical part of their budget. Now, by expanding the scope of the Internet tax moratorium to include telecommunications services to the extent they are used to access the Internet, S. 150 could immunize the bulk of all future telecommunications services from local telecommunications and utility taxes. That would not only starve local budgets; it also would be highly regressive and unfair: Poorer residents who lack a computer or can afford only plain/traditional telephone service would continue to be subject to local taxes, while businesses and wealthier residents with computers, who can substitute e-mail and future technologies like voice-over-Internet-protocol for dial tone service, would be immune from local taxes.

The second traditional municipal power that S. 150 threatens is the ability of local governments to impose franchise fees as ''rent'' for use of public rights-of-way on companies, such as telecommunications and cable service providers that use public property for private profit. Over one hundred years of court-supported municipal rights are at stake here. In 1893, the Supreme Court clarified that right-of-way fees are not taxes but payments in the form of rent. City of St. Louis v. Western Union Tel. Co., 148 US 92, 99, 13 S.CT. 485, 488 (1893). Ironically, the Supreme Court was then considering whether the federal government could require local governments to allow telegraph companies access to the public right-of-way without compensation. More recently, the 5th Circuit in City of Dallas v. FCC, 118 F. 3d 393 (5th Cir. 1997) cited the holding of St. Louis when it found that a franchise fee is not a tax, but an expense of doing business that is essentially a form of rent. Covina receives a five (5) percent franchise fee on incumbent local telecommunication cable service providers as compensation for use of local rights-of-way.

Federal legislation requiring local governments to allow private use of public property such as the right-of-way, free from local fees and charges, could be viewed as constitutionally suspect. Such legislation might constitute a federal taking of local government property without compensation, or federal commandeering of local government property to implement a federal regulatory program. Please consider these concerns in developing a program that achieves federal goals without harming local governments.

The City is prepared to work with you to:

Clarify that in adopting S. 150 and its House counterpart (H.R. 49), the Congress does not intend to interfere with or in any way limit the imposition or collection of any municipal telecommunications taxes or utility taxes applicable to telecommunications, nor with any municipal rights-of-way fees nor gross percentage fees collected in lieu of right-of-way fees.

Clarify that S. 150 does not preempt the imposition or collection of excise taxes of general applicability (including telecommunications and utility taxes) on services that employ telecommunications, cellular or cable television facilities, even if those services offer access to the Internet.

Without these clarifications, the adverse financial impact of S. 150 on local governments will be immense: the loss of billions of dollars in telecommunications fees and taxes in the years ahead for cities across the nation—fees and taxes that have been consistently upheld in court. If the legislation is passed with the currently proposed language, Covina can calculate the loss to its already-strained municipal budget, with direct effects on the General Fund. Municipalities in California and elsewhere have long imposed gross receipt-based fees on telecommunications, cable television and other providers' use of local rights-of-way for private profit, and many municipalities across the nation have imposed gross receipts-based taxes on the provision of telecommunications service or utility services, including telecommunications and cable television services. Federal preemption of these rights, whether intended or not, will result in immediate financial loss to Covina, and the size of that loss will only grow in the future as more communications shift to broadband, Internet-based technologies. We are confident this is not the legacy you intend or desire. We are offering to work with you in any way we can to avoid such an unfortunate result.

Sincerely,

WALTER ALLEN III,
Mayor.

CITY OF PASADENA,
OFFICE OF THE MAYOR,
Pasadena, CA, September 26, 2003.

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

DEAR SENATOR FEINSTEIN: The City of Pasadena has some concerns with legislation that has been approved by the House and is pending in the Senate (HR 49, S 150) that would extend on a permanent basis the current moratorium on state and local taxation of Internet access fees.

While the City has not actively opposed the extension of the 1998 Internet Tax Freedom Act moratorium (even though it does represent a federal intrusion into an issue traditionally handled on the local level), we do believe there is room for interpretation regarding the manner in which the legislation treats broadband Internet access. By using vague language to include broadband Internet access under the moratorium, we fear that the bill will allow telephone and cable television companies to use that protection to avoid paying local franchise or utility fees. These fees are fair and equitable payments for a company's use of the public right-of-way, and to lose that revenue would be damaging to our local budgets that are already strained.

It is our understanding that it was not the intent of the bill sponsors to endanger local franchising authority but the legislation has yet to be changed to correct these unintended consequences. I hope that you will urge your colleagues to amend the legislation to extend the Internet tax moratorium to ensure local franchising, utility fees, and right-of-way authority are protected. Thank you for your assistance with this important matter.

Sincerely,

BILL BOGAARD,
Mayor.

CITY OF LAKEPORT,
Lakeport, CA, October 14, 2003.

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

DEAR SENATOR FEINSTEIN: The City of Lakeport seeks your assistance in opposing language added to the Internet Tax Non-Discrimination Act (S. 150) that would expand the coverage of the moratorium by adding ''telecommunications services'' to the definition of Internet access. It would prohibit a local tax on any ''telecommunication service'' that is used for Internet access. Nearly all telephone services, including local dial up, wireless, satellite, and broadband (DSL and cable modem), provide Internet access.

This language would have a major adverse impact on our City and the financing of its essential services, such as police, fire, streets, and parks.

Soon, major telephone and Internet service providers will offer ''packages'' that bundle together Internet access and unlimited telephone services. Unfortunately, under the proposed language, such bundled services will likely be considered ''tax-free'', which we find regressive and unfair. Even if the average consumer would continue to be subject to the local tax (UUT) on traditional telecommunication services, those persons who could afford computers and high-speed Internet access (i.e., DSL and cable modem) would slip through this loophole and permanently escape taxation on similar services. No matter how much we wish to support the continued growth of the Internet, discriminatory taxation, or favoring the ''haves'' over the ''have-nots,'' is not the answer.

Finally, we want to assure you that we are in no way asking for your opposition to this language as a way of helping us achieve new tax revenues. We are only asking for help with protecting our city's badly needed existing tax revenues on telecommuncation services.

Thank you for your attention to this urgent matter. If you have any questions or need additional information, please feel free to call the League of California Cities Executive Director, Chris McKenzie, or your staff can contact the League's Washington representative, Eve M. O'Toole.

Sincerely,

R.E. LAMKIN,
Mayor.

CITY OF MONTEREY,
Monterey, CA, September 15, 2003.

Subject: Opposition to Internet Tax Non-Discrimination Act of 2003.

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

DEAR SENATOR FEINSTEIN: On behalf of the City of Monterey, I am writing to urge your opposition to provisions included in the ''Internet Tax Non-Discrimination Act of 2003'' that would modify the definition of ''Internet Access'' to include telecommunications services ''to the extent such services are used to provide Internet Access''. This expansion of the definition would result in a

loss of badly needed revenues for California's cities and significantly affect out City's ability to provide essential services.

Utility users taxes provide a critical contribution to local discretionary revenues making the UUT vital in helping fund critical city services, particularly public safety. For the City of Monterey this amounts to $2.4 million annually or about 6% of the General Fund budget. This revenue source directly supports police, fire, parks, streets and library services. The significance of the UUT has only increased as our City's other discretionary revenues have come under siege.

As you contemplate this limitation on local governments' ability to raise discretionary revenue, it is essential to put this restriction in the context with other limitations California local governments currently face as we try to meet critical local service needs. Remember that over the past several decades, cities' control of discretionary revenue sources has been severely eroded by state actions.

With the passage of Proposition 13, the state was given control over the allocation of local property taxes. In the early 1990's, the state exercised this control diverting billions in dollars of local property taxes to meet the state obligation to fund schools. In the 2003–04 fiscal year alone, this shift is estimated to be a loss of $5.4 billion from cities, counties and special districts.

In addition, cities and counties are faced with a shortfall of Vehicle License Fee revenues in the current fiscal year due to the ''deferral'' of payment of $825 million in backfill owed until 2006. This will have a critical impact on the ability to provide local services during the current fiscal year. The utility users tax represents one of the few local revenue discretionary revenue sources with rates, exemptions and terms determined at the local level to conform to community interests and needs.

Although the City of Monterey fully supports and recognizes the importance of fostering the developing of the Internet and other new technologies, Congress must also recognize as it considers this legislation that cities in California face serious fiscal constraints at both the state and local levels already.

We need your help to ensure that this legislation is amended to remove this detrimental expansion of the definition of ''Internet access.'' We look forward to working closely with you on this urgent matter.

Sincerely,

DAN ALBERT,
Mayor.

CITY OF MORENO VALLEY,
OFFICE OF THE MAYOR,
Moreno Valley, CA, September 16, 2003.

Subject: Internet Tax Non-Discrimination Act of 2003—Oppose.

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

DEAR SENATOR FEINSTEIN: On behalf of the City of Moreno Valley, I respectfully request that you oppose provisions included in the Internet Tax Non-Discrimination Act of 2003 (H.R. 49 and S. 52) that would change the definition of ''Internet access'' to include telecommunications services ''to the extent that such services are used to provide Internet access.'' This expansion of the definition would result in the loss of badly needed revenues for California's cities, and negatively affect our city's ability to provide essential services.

Moreno Valley is one of 150 cities in California that levy a utility users tax (UUT), which in our case includes telephone and cable television services. Utility users' taxes contribute significantly to the health of these cities' discretionary budgets. On average, the UUT comprises fifteen percent (15%) of general-purpose revenues in cities where it is collected. In Moreno Valley, the $9.4 million UUT comprises twenty one percent (21%) of the city's general fund revenue for fiscal year 2003/2004. Our largest general fund expense, by far, is public safety; sixty one percent (61%) of the city's general fund will be spent this year for police and fire services. Exemption of telecommunications services from taxation based solely on their relation to consumer Internet use will greatly hinder our efforts to finance these fundamental services.

Please consider this particular limitation on local governments' ability to raise discretionary revenues in context with state legislative actions, which have historically eroded local control of general-purpose funds. With the passage of Proposition 13, the state assumed control over the allocation of local property taxes. The state abused this authority in the early 1990's by ''temporarily'' shifting property tax dollars earmarked for local government, to meet the state's obligation to fund schools. A decade later, this shift results in a loss of $5.4 billion from cities for fiscal year 2003/2004 alone.

In the state budget for the current year, first-quarter revenue payments from the Vehicle License Fee, another constitutionally-protected revenue source for cities, have been ''deferred'' until 2006. The result: an immediate loss of $825 million for cities statewide, and $1.8 million for Moreno Valley. Additionally, $135 million in property tax revenue was shifted from local redevelopment agencies this year, augmenting Moreno Valley's revenue losses by $300,000.

Moreno Valley and other California cities have managed to retain adequate service levels despite the poor fiscal management practices of the state, primarily through the development of new revenue sources. While the City fully supports and recognizes the importance of fostering the development of the Internet and other new technologies, we hope the Senate recognizes that local governments cannot maintain vital services if the state and Federal governments continue to impair their ability to generate revenue.

We need your help to ensure that this legislation is amended to remove this detrimental expansion of the definition of ''Internet access.'' If there is any additional information we can offer you regarding this urgent matter, please contact us.

Sincerely,

WILLIAM H. BATEY II,
Mayor.

CITY OF NOVATO,
Novato, CA, October 13, 2003.

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

DEAR SENATOR FEINSTEIN: On behalf of the City of Novato, I am writing to urge your opposition to provisions included in the ''Internet Tax Non-Discrimination Act of 2003'' that would modify the definition of ''Internet Access'' to include telecommunications services ''to the extent such services are used to provide Internet Access''. This expansion of the definition would result in a loss of badly needed revenues for California's cities and significantly affect our city's ability to provide essential services.

Currently 150 cities in California levy a utility users tax (UUT), which in many cases includes telephone and cable television services. Utility users taxes provide a critical contribution to local discretionary revenues, on the average 15 percent of general-purpose revenues, making the UUT vital in helping fund critical city services, particularly public safety. Include how much revenue your City estimates is collected from your UUT? And what services in your City do these tax revenues support? Please be as specific as possible and translate into terms of potential cuts to specific programs or personnel. The significance of the UUT has only increased as our City's other discretionary revenues have come under siege.

As you contemplate this limitation on local governments' ability to raise discretionary revenue, it is essential to put this restriction in the context with other limitations California local governments currently face as we try to meet critical local service needs. Remember that over the past several decades, cities' control of discretionary revenue sources has been severely eroded by state actions.

With the passage of Proposition 13, the state was given control over the allocation of local property taxes. In the early 1990s, the state exercised this control diverting billions in dollars of local property taxes to meet the state obligation to fund schools. In the 2003–04 fiscal year alone, this shift is estimated to be a loss of $5.4 billion from cities, counties and special districts.

In addition, cities and counties are faced with a shortfall of Vehicle License Fee revenues in the current fiscal year due to the ''deferral'' of payment of $825 million in backfill owed until 2006. This will have a critical impact on the ability to provide local services during the current fiscal year. The utility users tax represents one of the few local revenues discretionary revenue sources with rates, exemptions and terms determined at the local level to conform to community interests and needs.

Although the City of Novato fully supports and recognizes the importance of fostering the development of the Internet and other new technologies, Congress must also recognize as it considers this legislation that cities in California face serious fiscal constraints at both the state and local level already.

We need your help to ensure that this legislation is amended to remove this detrimental expansion of the definition of ''Internet access.'' We look forward to working closely with you on this urgent matter.

Sincerely,

RODERICK J. WOOD,
City Manager.

CITY OF PLACENTIA,
Placentia, CA, October 1, 2003.

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

DEAR SENATOR FEINSTEIN: On behalf of the Citizens of Placentia, I am writing to express my Concerns about S. 150, the Internet Tax Non-Discrimination Act. I am very concerned about language in the bill that expands the definition of ''Internet access'' and thereby imposes a permanent moratorium not only on state and local taxes on Internet access fees but also on traditional telecommunications taxes. I strongly urge that you amend the language to clarify that the moratorium only applies to Internet access and to to other taxable telecommunications services or products, or to franchise or rights-of-way fees.

Under current law, Internet access ''does not include telecommunication services.'' The bill would change this to ''does not include telecommunication services except to the extent that such service is used for Internet access.'' While this proposal may have been well intended in that it proposes to ensure that the moratorium does not favor one form of technology over another, the language is so broad it can be interpreted to

mean we will be prohibited from collecting taxes on traditional telecommunications services.

As you know, states and cities across America are suffering from the most severe fiscal crisis since World War II. The loss of our telecommunications revenue would be a significant blow to Placentia. The city could lose an estimated $500,000 if this bill is enacted as currently drafted. We can not afford such a loss.

As reported by the Senate Commerce Committee, S. 150 is unacceptable. Again, I urge you to amend the bill to clarify that the moratorium does not apply to traditional telecommunications services. If you have any questions, feel free to contact me at 714/993–8117.

Sincerely,

ROBERT D'AMATO,
City Administrator.

CITY OF SAN BERNARDINO,
OFFICE OF THE MAYOR,
San Bernardino, CA, September 12, 2003.

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

DEAR SENATOR FEINSTEIN: On behalf of the City of San Bernardino I am writing to urge your opposition to provisions included in the ''Internet Tax Non-Discrimination Act of 2003'' that would modify the definition of ''Internet Access'' to include telecommunications services ''to the extent such services are used to provide Internet Access''. This expansion of the definition would result in a loss of badly needed revenues for California's cities and significantly affect our city's ability to provide essential services.

Currently 150 cities in California levy a utility users tax (UUT), which in many cases includes telephone and cable television services. Utility users taxes provide a critical contribution to local discretionary revenues, on the average 15% of general-purpose revenues, making the UUT vital in helping fund critical city services, particularly public safety. The significance of the UUT has only increased as our City's other discretionary revenues have come under siege.

As you contemplate this limitation on local governments' ability to raise discretionary revenue, it is essential to put this restriction in the context with other limitations California local governments currently face as we try to meet critical local service needs. Remember that over the past several decades, cities' control of discretionary revenue sources has been severely eroded by state actions.

With the passage of Proposition 13, the state was given control over the allocation of local property taxes. In the early 1990s, the state exercised this control diverting billions in dollars of local property taxes to meet the state obligation to fund schools. In the 2003–04 fiscal year alone, this shift is estimated to be a loss of $5.4 billion from cities, counties and special districts.

In addition, cities and counties are faced with a shortfall of Vehicle License Fee revenues in the current fiscal year due to the ''deferral'' of payment of $825 million in backfill owed until 2006. This will have a critical impact on the ability to provide local services during the current fiscal year. The utility users tax represents one of the few local discretionary revenue sources with rates, exemptions and terms determined at the local level to conform to community interests and needs.

Although the City of San Bernardino fully supports and recognizes the importance of fostering the development of the Internet and other new technologies, Congress must also recognize as it considers this legislation that cities in California face serious fiscal constraints at both the state and local level already.

We need your help to ensure that this legislation is amended to remove this detrimental expansion of the definition of ''Internet access.'' We look forward to working closely with you on this urgent matter.

Sincerely,

JUDITH VALLES,
Mayor.

CITY OF SAN LUIS OBISPO,
OFFICE OF THE CITY COUNCIL,
San Luis Obispo, CA, October 10, 2003.

Re: S. 150 Internet Tax Non-Discrimination Act Notice of Opposition

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

DEAR SENATOR FEINSTEIN: The City of San Luis Obispo seeks your assistance in opposing language added to the Internet Tax Non-Discrimination Act (S. 150) that would expand the coverage of the moratorium by adding ''telecommunications services'' to the definition of Internet access. It would prohibit a local tax on any ''telecommunication service'' that is used for Internet access. Nearly all telephone services, including local dial up, wireless, satellite, and broadband (DSL and cable modem), provide Internet access.

This language would have a major adverse impact on our City in funding essential services such as police, fire, streets and parks. In our city, utility user taxes (UUT) are one of our ''Top Five'' General Fund revenues, representing 12% of general-purpose revenues. ''Telecommunication services'' account for a significant portion of UUT revenues, bringing in $1.3 million in 2002–03. This is the equivalent of 15 police officers. In these fiscally tough times, where we have already made significant reductions in day-to-day public safety services to balance the budget, any further revenue cuts will result in crippling service reduction in our community.

And the impact will only get worse in the future. Soon, major telephone and Internet service providers will offer ''packages'' that bundle together Internet access and unlimited telephone services. Unfortunately, under the proposed language, such bundled services will likely be considered ''tax-free,'' which we find regressive and unfair. Even if the average consumer would continue to be subject to the local tax (UUT) on traditional telecommunication services, those persons who could afford computers and high-speed Internet access (such as DSL and cable modem) would slip through this loophole and permanently escape taxation on similar services. No matter how much we wish to support the continued growth of the Internet, discriminatory taxation is not the answer.

Finally, we want to assure you that we are not asking for your opposition to this language as a way of helping us achieve new tax revenues: we are only asking for help in protecting our City's badly needed existing tax revenues.

Sincerely,

DAVID F. ROMERO,
Mayor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, this is a very important issue we have in front of us. I wish to pause for a moment and address an issue I saw in the Washington Post this morning that affects what we are doing here this morning and what we do every single day; that is, our ability to work together to ask questions on behalf of American taxpayers, on behalf of all of the people we represent, to be able to get answers from each other and from the administration, and to have the best information we can so we can make the right decisions.

I was quite shocked this morning to see in the Washington Post a headline that says: ''White House Puts Limits On Queries from Democrats.'' Reading this more closely, it says:

> The Bush White House, irritated by pesky questions from congressional Democrats about how the administration is using taxpayers' money, has developed an efficient solution.

It will not entertain any more questions from opposition lawmakers.

I thought for sure I was not awake. So I rubbed my eyes again and looked at it again and read the same thing. It went on to say:

> The decision, one that Democrats and scholars say is highly unusual, was announced in an e-mail on Wednesday to House and Senate appropriations committees.

Further down there is a comment from Norm Ornstein, a congressional specialist at the American Enterprise Institute. He said:

> I've not heard of anything like this happening before. This is obviously an excuse to avoid providing information about some of the things the Democrats are asking for.

I appreciate that in these days of debate and the important issues we have in front of us, we have been asking some pesky questions of this administration. Pesky questions such as: How specifically will we spend $87 billion going to Iraq, and what specifically will be done to rebuild? What is the plan for our soldiers? What is the plan in terms of making sure we complete the mission and bring them home safely?

We have asked pesky questions such as: Why is it that subsidiaries of Halliburton get billions of dollars in no-bid contracts when our own businesses and our own States are unable to find out about bidding processes and unable to participate in what should be an open, transparent process, given the fact these are American tax dollars, public tax dollars? And we have asked pesky questions about Bechtel.

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

Ms. STABENOW. I am honored to yield to my friend and leader from Nevada.

Mr. REID. Is it true that you served in the House of Representatives before serving in the Senate?

Ms. STABENOW. Yes.

Mr. REID. During your tenure there, I am sure you had many occasions to send inquiries to the administration. Whether it was Veterans Affairs, the Social Security Administration, White House council, you have done that over the years; is that not true?

Ms. STABENOW. Absolutely.

Mr. REID. Over the years, it is true that you have received responses?

Ms. STABENOW. Yes.

Mr. REID. And there was never a question raised as to whether it was a

Democratic Congressman or Senator or Republican House Member or Senator asking the question; isn't that right?

Ms. STABENOW. Absolutely.

Mr. REID. Didn't you always feel that no matter what political party the Member of Congress was who asked the question, it had no bearing on the answer? Isn't that true?

Ms. STABENOW. Yes.

Mr. REID. I read that article to which you refer. It seems there is now new criteria established at the White House, that only if you are a Republican will they answer questions of a Member of Congress. Is that what that article said?

Ms. STABENOW. That is exactly what it says.

Mr. REID. How many people live in the State of Michigan?

Ms. STABENOW. We have over 9 million people in the State of Michigan.

Mr. REID. And Michigan is represented by two Democratic Senators.

Ms. STABENOW. That is correct.

Mr. REID. The distinguished senior Senator, CARL LEVIN, who everyone acknowledges is one of the finest Senators ever to serve in this body.

Ms. STABENOW. Absolutely.

Mr. REID. He is an expert on issues relating to defense. I am sure on a weekly basis, if not more often, he makes inquiries at the Pentagon and other offices of the executive branch of Government as to questions he has in his role as the lead Democrat on the defense committee; is that right?

Ms. STABENOW. In fact, I add that over the years, under Democratic and Republican Presidents, the senior Senator from Michigan asked very important questions about contracting. He was the first, I believe, to come forward with the acknowledgement and questions about the $600 wrenches and other questions of excesses at the time in the past from the Pentagon. To Democratic or Republican Presidents, he has asked some pretty ''pesky'' questions.

Mr. REID. What that article says is a State of 9 million people, which has democratically elected Democratic Senators, these two Senators would not be able to ask questions of that administration; is that what it does?

Ms. STABENOW. That is how it appears. We have a lot of very serious questions our constituents want us to ask of the administration.

Mr. REID. I direct this to the Senator in a way that I can only say is as sincere as I can be. I very much appreciate the Senator bringing this to the attention of the American people through the Senate. It is our ability to bring matters to the floor that make this country better—there are other ways of showing how great this country is, but certainly one is being able to bring matters to the Senate floor without getting permission of the administration.

I applaud the Senator from Michigan for jumping on this issue very quickly, as the Senator has done on many other issues.

Ms. STABENOW. In the State of Michigan, we have many questions being asked—a lot that we asked of the administration on homeland security, how we are funding our borders and keeping them secure. Why is it we are not providing more for our first responders? We have given some dollars but certainly a very small amount of what they need. Why are we not funding more for communications equipment that allows one city's police department to talk to another city's police department, or the police department to talk to the fire department, or the EMS workers to be able to do their job in a community? Why is it we are not providing more dollars directly for those kinds of responsibilities? They are right on the front lines. When you have a problem, when there is a serious crisis, whether it is homeland security or some other crisis in the community, you pick up and call 911, and we want to know people are prepared.

Those are questions about appropriations. Those are questions we asked of the administration. How are you moving forward and designing and implementing a Department of Homeland Security? What are we doing at the borders?

In my State, we have other questions we are asking that we are assuming the administration will endeavor to answer. It relates to the issues of Canadian trash trucks now coming across our borders into Michigan—about 200 a day—that are not being thoroughly inspected at the border because there is not a way to do it without putting an inspector in the back of every truck.

We have serious concerns about what is happening in terms of homeland security. Those are questions. How can we work together? How can we make sure we are addressing those issues that will allow our citizens to be safe, as it relates to these trash trucks coming across the border. They need to be stopped.

Over 165,000 people in my State signed an online petition to support my request to the EPA that they get involved in stopping these trucks and using the authority they have. Now, we go through the appropriations process on this matter. I have been very appreciative of the fact that we have worked together on a bipartisan basis in the Senate to address these issues and put more equipment at the border. I have been pleased to have the support of leaders on the other side of the aisle to support efforts to do that, to work together on behalf of the people we represent and make sure they are safe.

But when I see things such as this kind of a story, that e-mails are going out saying the White House doesn't like our ''pesky'' questions about how dollars are spent and suggestions that maybe they could be spent differently and better and more wisely in our States—they don't like those questions, so they sent out an e-mail saying they are not going to answer them anymore. They are only going to answer the questions coming from the Republican committee chairs. They are not going to answer questions coming from us. This is deeply disturbing and it should be disturbing to every single one of the people we represent. It should be, frankly, disturbing to people on both sides of the aisle.

I was in the House of Representatives for 4 years under a different administration. I asked a lot of tough questions of a lot of Departments and I expected answers. I expected that when my Republican colleagues asked questions of that Democratic administration, they would be given answers as well.

We are a separate branch of Government. We are the appropriators, all of us. The Constitution didn't say, by the way, only the majority party can have access to information and only the majority party is responsible for appropriations and guaranteeing the wise use of American tax dollars. They said the Congress of the United States is responsible, and that is all of us.

I think it is very important that we send a message very quickly from the Senate that we object to this, object to it together. We work hard on appropriations. We ask a lot of questions. We have a lot of give and take. Amendments are proposed; they rise, they fall. That is the process. We all respect each other and we all respect that process. At the end of the day, we assume that if we are asking, as they say, ''pesky'' questions, we will get answers regardless of who we are. We may not agree with the answers.

That is why we live in a democracy. That is the democratic process. We respect the fact there are differences in views, priorities, and values, but we do not accept—I do not accept—that we will be blocked from receiving information. It would be astounding if every time, as a Member of this body, I had to ask for a freedom of information request from the administration in order to get questions answered on items of importance to the people I represent—whether it be agriculture, manufacturing, homeland security, health care, education, the environment, or transportation. I could go on and on. We have critical issues we are responsible for addressing and responsible for doing it in the most efficient and effective way we can.

There is only a limited amount of resources and we have to make sure we make wise decisions with those resources. That is our job.

AMENDMENT NO. 2141 TO AMENDMENT NO. 2136

Ms. STABENOW. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Ms. STABENOW] proposes an amendment numbered 2141.

Ms. STABENOW. I ask unanimous consent that further reading of the amendment be dispensed with.

The amendment is as follows:

At the appropriate place insert the following:

Since, Article I of the U.S. Constitution grants Congress the power of the purse; and

Since, Congressional oversight of Executive Branch expenditures of public funds is essential in order to prevent waste, fraud, and abuse of taxpayers dollars; and

Since, Congress can only exercise its oversight responsibilities if the White House and Executive Branch agencies are responsive to requests for information about public expenditures;

Therefore it is the Sense of the Senate that,

The White House and all Executive Branch agencies should respond promptly and completely to all requests by Members of Congress of both parties for information about public expenditures.

Ms. STABENOW. Mr. President, I simply say this is a very short amendment. In part, it indicates:

Since, Congressional oversight of the Executive Branch expenditures of public funds is essential in order to prevent waste, fraud, and abuse of taxpayer dollars; and

Since, Congress can only exercise its oversight responsibilities if the White House and Executive Branch agencies are responsive to requests for information about public expenditures;

Therefore, it is the Sense of the Senate that,

The White House and all Executive Branch agencies should respond promptly and completely to all requests by Members of Congress of both parties for information about public expenditures.

I hope we will have unanimous support for this amendment and that we can quickly send a message to the White House and ask that they reverse the policy laid out this morning in this article.

Mr. DURBIN. Mr. President, I wish to join the comments of the Senator from Michigan. It is, I am sure, painful and distracting for the administration to receive inquiries from Congress. It sure would be a lot easier if Congress wasn't around to mess up their work. I mean, we ask all these hard questions about what they are doing with the taxpayers' dollars. What are you doing to make America a safer place? I am sure if they did not have to answer those questions and be held accountable, they would have a lot more time to do other things.

I think the reason for the questions gets down to a basic document called the Constitution. If I remember correctly from early lessons, we do have three coequal branches of Government and a system of checks and balances. This administration has decided that particular part of the Constitution is going to be ignored.

Frankly, I don't think that serves our Nation very well. Whether it is a Democratic administration or a Republican administration, the fact is they have to be held accountable. The way they are held accountable is not only through an election, but through the operations of Congress which appropriates moneys, passes laws, and asks hard questions.

Now we see the official policy of this administration is to say we are only going to answer Republican-approved questions. That, to me, is a sad commentary on this administration which has, frankly, written a record of concealment in the years they have been here.

You recall the lawsuit that was involved when we drew up the Energy bill. We asked the Vice President of the United States, who was one of the designers of the administration's Energy bill, which special interest groups were sitting in the room when they wrote the bill. He said to Congress: It is none of your business. We don't have to tell you. We brought a suit against the administration asking for that information and we were unsuccessful.

Today we know there were special interest groups present. We just don't know who they were. If you look at the bill, you can see who they likely were. They are the ones that were rewarded—oil companies and major energy companies. They are the ones who did very well with this Energy bill.

When the Senator from Michigan raises this question as to what this new administration policy means, I think she really hits the nail on the head. Congress has an important constitutional role of oversight on this administration and any administration, and for this administration to decide that certain Senators and Congressmen cannot ask questions that will be answered, I think is going to set us back.

I had the same experience with the Department of Justice. Attorney General John Ashcroft, who served in this Senate for years and asked many questions of previous administrations, really loathes to answer any questions that come particularly from Democratic Senators. That has caused a lot of, I guess, concern because some of us believe there are important questions that need to be asked and answered.

The PATRIOT Act, for example, was a new delegation of authority 2 years ago to the Government. It gave the Government more power than they had before, power that comes close to, if it doesn't, infringing on our rights and liberties. We asked some questions: How is this Department of Justice using the PATRIOT Act? Unfortunately, the Attorney General has not been responsive. One might say: Well, he comes to Congress, doesn't he? He submits himself to questions? If we look at the record, we will see this Attorney General's record of coming to Congress and being held accountable is a record that shows he doesn't care to do that either.

They don't answer written inquiries, and the Attorney General does not appear personally. Frankly, that leads to mistrust, and it doesn't speak well of a democracy where that is the hallmark of their policy.

It strikes me Congress has some important responsibilities here, and one of them is reflected in the issue raised by the Senator from Michigan. Another one is reflected in this so-called 30-hour debate, this one-sided debate which is to take place next week. It appears the Republican majority in the Senate, 51, believe they have been treated unfairly because the President has only had 168 of his judicial nominees approved while 4 have been held up. That is right, the score is 168 to 4, and they are arguing that is unfair, so unfair we need to tie up the Senate, we need to stop consideration of appropriations bills, we need to stop any consideration of bills that might help the men and women in uniform who are fighting for us in Iraq and Afghanistan. We don't have time for that, but we have to spend 30 straight hours in a one-sided debate on the Republican side arguing that holding up 4 judges out of 172—4 out of 172—is somehow unconstitutional or unfair or unjust.

It goes to the heart of this same document, our Constitution, which says the Senate is not a rubberstamp. The Senate has the power to not just consent to judges, but to advise and consent, and that advise-and-consent role includes asking hard questions of judicial nominees.

The four who have been held up so far from the Bush White House, I think, represent the most extreme of his nominees. But there are many others who have been approved who have philosophies entirely consistent with the President and his administration.

Make no mistake, out of the 168 nominees who have gone through this Senate, a record number for any President, 168 have been approved. Of those, we will find many conservative Republicans with views much different than my own. We accept that. But for these 4, we think they have crossed a line, a line which really calls on us in our capacity as Senators with responsibility of the advise-and-consent clause to say at some point we have to say no for 4 judges out of 172.

I might add on this bill that is before us, at a later moment I will be offering an amendment. It is an amendment which really doesn't appear to have much to do with the Internet tax question, but it is an amendment I am going to continue to offer on every available bill until the Senate goes on record and passes it again and enacts it into law. It is an amendment which passed this Senate about 2 weeks ago by a vote of 96 to 3. It is an amendment which says Federal employees who are members of our National Guard and Reserve units who are activated will have their Federal salaries protected while they are serving our country.

This is exactly what happens to State employees in dozens of States and city and county employees across America where their units of government have said: If you go off to serve our Nation in the Guard and Reserve, we will stand behind you. We will make up the difference in your salary. We will protect your families' income while you are serving our Nation and risking your lives.

Sadly, the same standard is not applied to Federal employees. Here we

are with 10 percent of the Guard and Reserve in Federal employment—120,000 of those who are in the Guard and Reserve are in Federal employment; 23,000 have been activated, and we do not make up the difference in their salaries while overseas.

For some, there is no difference, but for some there is a big disparity. I offered this amendment on the floor, and it was adopted 96 to 3.

Mr. MCCAIN. Will the Senator yield so I can make an announcement?

Mr. DURBIN. Yes, without losing my right to the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, it is so ordered.

Mr. MCCAIN. Madam President, for the benefit of my colleagues, we have been in some intense negotiations on the Internet tax issue. We have made significant progress. We still have one significant hurdle remaining where we can perhaps get all sides together. There is about a 50–50 chance. But we should know in about 20 minutes as to whether we will reach this very important agreement which would basically eliminate any major issues associated with the Internet tax issue.

I thank my colleague from Illinois for yielding. I yield the floor.

Mr. WYDEN. Will the Senator yield?

Mr. DURBIN. I will be happy to yield.

Mr. WYDEN. Madam President, with the chairman of the Commerce Committee, and my friend from North Dakota, Senator DORGAN, who has worked with me on this now for 7 years, we have made some significant headway in the last half hour, 45 minutes. To get this done, there are some difficult choices that have to be made. One that would be very painful for me, given my involvement in the original law, would be to accept some sort of time limit rather than make it permanent.

I say to the Senate, I am willing to look at that in the name of trying to find common ground. What we can't have as we go through this is to have DSLs, this tremendously exciting service which in so many instances is going to be the key for folks getting Internet access in a wireless fashion, hammered again and again in the future. We are going to see if we can find common ground.

The point of this law more than 5 years ago was to ensure technological neutrality so the Internet and the various ways it is delivered would not, in some way, advance some at the expense of others. We still have to find a way for that technological neutrality.

We may be able, given the fact that the staffs are working now to have a breakthrough on this in the next half an hour, but as the author of the original law in the Senate, I want to make it clear that I am open to trying to find some common ground and make some significant concessions to do it. That is what we are considering now.

I thank the Senator from Illinois for yielding.

Mr. DURBIN. I, of course, thank the Senator from Oregon. I appreciate the hard work of the Senator from North Dakota, the Senator from Arizona, and the Senator from Oregon on this important legislation.

I mentioned earlier the reservist pay amendment which I will be offering at some point on this legislation, but there is another amendment which I will be offering which I would like to alert the sponsors of so it comes as no surprise. It is our understanding that if there is a tax moratorium on Internet operations, which I would support with carefully defined circumstances, it will result in a substantial savings to telecommunications companies across the United States. I am going to be offering an amendment during the course of consideration of this bill which says that the savings to these companies shall be passed on to the consumers in America.

It strikes me that at a point in time when we are in a recession, when families are struggling, some facing unemployment, others trying to make ends meet, that if we are going to relieve this industry of substantial taxation, millions if not billions of dollars over time, the savings ought to go to families, the customers. I think that would be a good move on our part.

So if we want to talk about invigorating the economy, then why not reduce the telephone bill or the tax bill that a family faces on a monthly basis?

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

Mr. DURBIN. I yield to the Senator for Nevada, without yielding the floor.

Mr. REID. Madam President, I say to my friend from Illinois, in relation to the amendment that is pending, I asked the White House by letter to give me the breakdown of the cost of all of these trips they take around the country campaigning for people. Who pays for that? Is it paid for by the taxpayers of this country? Is it paid for by the Republican National Committee? The President is a rich man. Does he pay for it personally?

It has been months and I have had no response. I think I am entitled to an answer to that most important question. People are concerned about that. The President goes to his ranch, he goes off on day trips campaigning only.

Would the Senator agree with me that that is the direction of this amendment, and that I am entitled, as a Member of the Senate, to an answer to the question as to who is paying for these junkets around the country?

Mr. DURBIN. Reclaiming my time, I say to the Senator from Nevada that is a perfect illustration as to why the Stabenow amendment should be enacted, because what Senator STABENOW is trying to achieve is the right of the Senator from Nevada and any Senator, Democrat or Republican, to ask legitimate questions about the expenditure of public funds. If we decide that is going too far and perhaps inconveniencing the administration by forcing them to be held accountable, then we might as well pack up and go home.

As they say, if we are here in order to total up years for retirement, it is a pretty easy job; but if we want to come here and go to work to try to achieve good for this country and make certain that people who are misusing public resources are, in fact, held accountable for it, then it is hard work.

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

Mr. DURBIN. I would be happy to yield to the Senator from Nevada.

Mr. REID. How many people live in the State of Illinois?

Mr. DURBIN. About 12½ million.

Mr. REID. I say to the Senator from Illinois, I spoke through the Chair to the distinguished junior Senator from Michigan about the State of Michigan. There are 9 million people in Michigan, two Democratic Senators. Under the rule that we have just learned about that the White House is not going to answer questions of Democrats, 9 million people who live in the State of Michigan in effect cannot have their Senators asking questions of the White House.

The Senator from Illinois, who represents 12½ million people, there is a Democratic Senator and a Republican Senator who has announced his retirement, who is not going to run for reelection—the Senator who has announced his retirement and in effect is a lame duck, fine man that he is, can have his questions answered, but the Senator who was just reelected representing 12½ million people cannot have his questions answered. Does that seem fair?

Mr. DURBIN. I say to the Senator from Nevada, it not only does not seem fair, it raises another question in my mind. Why would we on the Democratic side of the aisle approve any executive appointment of someone who is going in the executive branch and from that point forward will never speak to us again? Now, if we are being asked by this administration to approve people to hold offices within this administration who have not answered all the questions in committee and having been approved on the Senate floor will from that point forward never communicate with us again, then, frankly, I think we are derelict in our responsibility.

So I say to the administration, think this through. If they are saying that the people we appoint in the Senate are not going to answer the questions propounded by Democratic Senators, then, frankly, I think it is untoward of them to suggest that we should just approve all of these appointments.

I think it is fair game for the President to fill vacancies, and I have supported the overwhelming majority of the President's requests. But if the policy is once approved by the Senate, these executive appointments, these people working in these agencies, will refuse to take telephone calls or answer letters of inquiry from Members of the Senate, refuse to be held accountable for their actions as public officials, then I think we are derelict in

our responsibility to the people we represent.

Mr. LEAHY. Will the Senator from Illinois yield for a question without losing his right to the floor?

Mr. DURBIN. I would be happy to yield to the Senator from Vermont.

Mr. LEAHY. Madam President, I ask my friend from Illinois, who serves with me on the Appropriations Committee—who served on a number of committees in the other body before he was in the Senate—who has as much knowledge of procedure as anyone having served in the other body and served in this body, it has been my experience in over a quarter of a century on the Appropriations Committee, through
six administrations—President Ford, President Carter, President Reagan, former President Bush, President Clinton—that both Republicans and Democrats were able to ask questions and expect answers from the executive branch.

Further, it was my experience that throughout all of these administrations, Republican and Democratic alike, there was not a restriction made because we were required to ask these questions. Is that the experience of the distinguished Senator from Illinois? Has the Senator had the same experience in both bodies—I am speaking now of appropriations but, of course, a lot of other committees are involved—if we asked questions about where the money went, we received the answers irrespective of whether one was a Republican or Democratic?

Mr. DURBIN. In reply, I say the Senator from Vermont is absolutely correct. Allow me to use another illustration. Just last weekend, there was the downing of the Chinook helicopter in Iraq with 15 of our soldiers killed initially and another soldier who has died just last night, I understand, so 16 soldiers died and 20 more were seriously injured. The pilot of that helicopter was from my home State. It was a National Guard helicopter.

After that occurred, unsolicited I received communications from reliable military sources that suggested that the Guard helicopters in activated units were not adequately equipped and prepared to deal with shoulder-fired missiles. This is as serious a question as can be given to any Member of the Senate. Naturally, the families—the servicemen first and their families—wanted to know the answer. So what I did was to write a letter directly to the Secretary of Defense, Donald Rumsfeld, saying please look into this immediately; see if the National Guard units that have been activated are sufficiently protected with equipment.

During the course of asking this question, more communications came my way. Now we have received a lot of communications suggesting that families all around Illinois, and even around the country, are telling us about deficiencies in the equipment available to our servicemen in Iraq and Afghanistan, and particularly to activated guardsmen and reserves.

Consider that just yesterday, the President signed an $87 billion appropriation for the effort in Iraq and Afghanistan which, as I understand it, about $67 billion was for our men and women in uniform, which I supported. As much as I disagree with the President's foreign policy, I am not going to shortchange our men and women in uniform for the resources they need to be successful in their mission and come home safely.

Having done that, having given the appropriation to the administration, now we have families and servicemen coming to me, as the Senator from Illinois, saying they do not think the money is being spent properly. I have a responsibility to their families and to my State to ask the hard questions of the administration. Are you doing all that you can to protect our servicemen? Frankly, I think that is why I was elected. If I am not given a chance to even ask that question or to have my inquiry answered, what, then, can I say to these families or to these servicemen who believe that I am their elected representative and have that responsibility?

Senator STABENOW, in her amendment, says this new policy of the administration, of refusing to answer letters from Democratic Senators and Democratic Congressmen, takes away from the voice of those families and those servicemen and people across the United States who rely on us to stand up and hold any administration accountable, whether it is Democratic or Republican.

I think, honestly, her amendment goes to the heart of why we are here doing business in the Chamber of the Senate. I support her very strongly. I urge my Republican colleagues who have been very loyal to their President, and that is understandable and admirable, to think long and hard about this policy. Things change in this town. The tide of politics can hit the shore and go back out to sea and come back again. You never know, a year, 2 years, 3 years from now, whether or not policies taken by this administration establish a precedent which is not healthy for our constitutional democracy. Certainly this decision by the administration to turn down inquiries and letters of request on matters as basic as the protection of our men and women in uniform and whether or not our helicopters are adequately protected—their decision as a policy basis, which I understand has been included in an e-mail and sent across the administration—raises some important questions.

I see the ranking member of the Senate Budget Committee, Senator CONRAD, has taken the floor. Again, he is a perfect illustration of why this new policy of the administration, refusing to answer inquiries from Democratic Senators about their spending policies and taxing policies, make it impossible for him to do his job on the Budget Committee to make certain that every administration is held accountable.

I am going to yield the floor and say to my friend and colleague from Michigan, thank you for bringing this issue up. This is not just a morning newspaper article. This is a serious constitutional question. I hope some of my colleagues on the Republican side of the aisle, after first reacting they want to stand by their administration, will think long and hard if this is a policy we in America should be asked to live with, when future Congresses and future Presidents are elected and we are all told we are trying to share a responsibility of accountability across our Government.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Madam President, I ask to speak as if in morning business for no longer than 10 minutes.

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

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

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

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

Mr. CONRAD. Mr. President, less than 6 months ago, we enacted the Jobs and Growth Tax Relief Reconciliation Act which contained $20 billion in temporary State fiscal relief. Yet before us is legislation that may effectively take back a significant portion of that much-needed relief for States. In my earlier career, I was tax commissioner in the State of North Dakota. My successor, a Republican, a man who currently holds the office, was in my office just a couple of weeks ago explaining the impact of the committee bill on our State. He estimated this bill would cost our State $20 million. That may not be a lot of money in Washington. I can tell you that is a lot of money in North Dakota. That is $20 million we would be taking away from the State of North Dakota they have every right to collect.

Let me make absolutely clear that I am not for taxing access to the Internet. I am not for that. I have supported the moratorium. I will continue to support the moratorium. But as Senator DORGAN made clear on the floor this morning, definitions do matter. Unfortunately, the bill out of the committee has left a lot of open questions. Lawyers looking at it are telling us it would restrict the States far beyond a simple extension of the moratorium. I do not believe that is the intention of the Congress. I certainly hope it is not the intention of the committee to go

beyond the definition of access we agreed to in 1998 and reaffirmed in 2001 in a way that would preempt States' abilities to levy taxes as its elected representatives see fit.

On the floor of the Senate, we have seen a bipartisan effort to make certain what we do here is what we really mean. I have been very interested to see four distinguished former Governors—Senator ALEXANDER, Senator VOINOVICH, Senator CARPER, and Senator GRAHAM, who are among our most respected colleagues on issues such as these, and all of them served successfully as Governors—warning Members of Congress the legislation before us has unintended consequences. I hope we listen carefully to our colleagues, Senator ALEXANDER, Senator VOINOVICH, Senator CARPER, and Senator GRAHAM, and that we pause and get this right.

We should not tax access to the Internet. That would inhibit its economic potential. It would reduce opportunity in our society. But at the same time we shouldn't be going beyond that principle and that concept in restricting the States' rights to levy taxes that are reasonable and appropriate. That is not the appropriate role of the Federal Government.

I hope very much we will take a few moments and get this right so that this is not a rush to judgment and we not impose on hard-pressed States. We already know there is some $90 billion of shortfall by the States all across the country. The last thing they need is the Federal Government to come in here and take away legitimate sources of revenue from them. That makes no sense.

I hope my colleagues are going to be sufficiently patient and that we get this right. As Senator DORGAN said—again, I want to emphasize—earlier on the floor, definitions matter. I heard Senator MCCAIN say the same thing last night; that it is important to get these concepts right, to get them carefully defined so we are not doing something other than what we really intend to do, which is to provide a continuing moratorium on the taxation for Internet access.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Madam President, I ask unanimous consent to speak in morning business for 10 minutes. I understand we have a lull on the Internet tax bill.

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

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. 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. MCCAIN. Madam President, I ask my friend from North Dakota—this is on the Stabenow amendment—we would like to have a couple-word change. If he would look at the amendment where it says, in the last paragraph, ''The White House and all Executive Branch agencies should respond promptly and completely to all requests by Members of Congress,'' that between ''all'' and ''requests,'' if we could add the two words ''constitutionally appropriate.'' Would that be agreeable to him, so it would read: ''completely to all constitutionally appropriate requests by Members of Congress''?

I assume that most Members of Congress would not make unconstitutionally appropriate requests, but that seems to be perfecting language that some of my friends would like to have added.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I say to the Senator from Arizona, this is not my amendment, so I would have to consult with the author of the amendment.

As you know, the amendment is prompted by a news story today from the White House suggesting they will not be answering inquiries except by certain Members of Congress. So that prompted her to offer this amendment.

I will certainly consult with—she is on the Senate floor, so perhaps we can ask her directly.

Mr. MCCAIN. Madam President, do I still have the floor?

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I ask unanimous consent to ask a question of the Senator from Michigan.

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

Mr. MCCAIN. Madam President, I ask the Senator from Michigan if she would be agreeable to a two-word addition in the last paragraph, that between the words ''all'' and ''requests'' the words ''constitutionally appropriate'' be added. I wonder if that would be agreeable to her. If it is not agreeable to her, I will not propose the amendment.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, the only question I have is the word ''appropriate.'' We certainly want this to be within constitutional parameters. I would say, at this point, the question I would have would be about ''appropriate.'' Who decides what is ''appropriate,'' given the judgments the administration is making? Possibly we can work together to find something else other than that word. But at this point that would be my concern.

Mr. MCCAIN. I thank the Senator and yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, will the Senator from Michigan allow me to ask a question?

Ms. STABENOW. Certainly.

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

Mr. REID. This amendment is offered by the Senator from Michigan, and it never took into consideration doing anything that was unconstitutional?

Ms. STABENOW. That is correct.

Mr. REID. Everything the Senator does is within the framework of the Constitution. So I would hope that the matter could be disposed of as written because it goes without saying that we want this to be constitutional. We would never try to do anything that would be outside the parameters of the Constitution.

So I hope this amendment could be accepted. It appears to me it should be done by voice. If that is not the case, I know that a number of other people have more to talk about on this amendment. So I would hope the majority would make a decision quite soon as to what is to be done with this amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada has the floor.

Mr. REID. I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, I mentioned that the event that has prompted this amendment, I understand, was in the newspaper this morning. It was apparently a report that the White House would limit their responses to questions from Members of Congress.

I, at one point, chaired the appropriations subcommittee here in the Senate that actually funds the operations of the White House. We always work very closely with the White House. When they request the necessary funding, we provide it. We never have any difficulty. The same is true with respect to the agencies. We fund all of the agencies of the executive branch. We spend a great deal of money in doing that. We work together to find the appropriate number and the appropriate amount of resources that are needed.

The White House is a little different. When they make the request, we fund the request. That is the way we deal with the White House.

But with the executive agencies, of course, we have disagreements and differences from time to time, but we end up sending billions and billions—hundreds of billions—of dollars for expenditures through these agencies. If ever—if ever—the Members of the Congress are prevented from asking questions about how the money is used, how the money is spent, then there is something fundamentally broken.

So I was as surprised as my colleague from Michigan to read the story in the newspaper this morning. I know it is nettlesome, I know it is a pain, it is a bur under the saddle to get questions from Members of Congress if you are a member of the executive branch.

At one point, I was a member of the executive branch in State government,

and all the State legislators were always peppering us with questions. Sure, that is a nuisance. Nobody likes that. But the fact is, the congressional actions here determine how much money is made available. The same is true in the State legislatures. They have every right—in fact, they have a responsibility—to the taxpayer to try to determine how that money is spent. If they have questions about it, they ask those questions. If they ask those questions, they darn well expect an answer, even if it is considered a nuisance by those who are receiving the questions.

So my hope is they will just accept this amendment at some point today. I understand what has prompted the amendment.

Let me just, for a moment, talk about the underlying proposition before the Senate; that is, the bill that is brought to the floor today, the moratorium on Internet taxation. I want to see us pass a piece of legislation. I do not think it is satisfactory to have the moratorium expire on November 1, and then to just let that be the word. That is not where I would like to see this end up.

So we have a bill on the floor that came from the Commerce Committee. That legislation passed the Commerce Committee unanimously, but it was not quite the way it seemed when you take a look at that vote because we also agreed that the definition of that Internet tax moratorium was faulty or at least not agreed to, and we would work on it coming to the floor of the Senate.

We have not yet reached a compromise. That definition is the key. It is the linchpin to this legislation. So we have to find a way to resolve that. We thought this morning perhaps there was a way to do that. That appears not to be the case. I think we still have some distance between the various thoughts about how one would craft this in a way that is helpful to not retard and not injure the buildout of the infrastructure for the Internet and, at the same time, be fair to State and local governments with respect to their revenue base and not be preempting the opportunity they need and they would have, as they have always had, to tax certain services. So we continue to try to talk and see if we can find a way to reach some kind of agreement on this definition.

Now, I want to make an additional point because I think it is important to continue to make this point even as we work on these issues. We have this issue on the Senate floor today. I understand why that is the case, because this issue had a November 1 deadline by which the moratorium on Internet taxation expired.

We have a responsibility to try to see if we can pass this legislation. So there was a deadline with respect to this legislation.

But there was a deadline on appropriations bills as well. That deadline was October 1. It is now November. We still have appropriations bills that have not been considered in the Senate. Yesterday there was great urgency about an appropriations bill. Everybody cooperated to try to get that done. We are told today there is great urgency about legislation. We are told that the majority leader wants the Congress to work on Veterans Day and so on.

Then we are told, despite the fact that there is this urgency to get appropriations bills done and they request cooperation, that beginning next Wednesday we will spend 30 hours so that the majority can talk about the four judges they have not been able to get confirmed.

It seems to me perhaps we should talk about the 168 judges we have confirmed. If we are going to take time in the middle of next week, after having worked on Veterans Day, because we believe there is such an urgency—and I believe there is an urgency with appropriations bills; we should get them done—if we are going to take 30 hours in the middle of the week in order to try to convince the American people that the Congress is not moving forward on judgeship nominations, and they are going to take 30 hours to talk about four judges who didn't get confirmed by the Senate, I think perhaps then we need to take much more time to talk about the 168 judges we did confirm.

I am a little miffed at having these talk shows and others get all their talking points about how the Senate is stalling on judgeships. We are not stalling on judgeships. Most all of the Federal judges who have been nominated by this President have been confirmed by this Senate.

We have an advise and consent responsibility. The Constitution does not say the President has a right to pick somebody and say to that person: For the rest of your life you will be a Federal judge.

That is not the way the Framers of the Constitution described it. This described a dual role. The President shall nominate; the U.S. Senate shall confirm—advise and consent. Even George Washington ran into some tough sledding. Even George Washington lost a Federal judge in the Senate because they wouldn't confirm one of George Washington's judgeship appointments or nominations. So it started with George Washington.

But when you talk about cooperation, this Senate has provided extraordinary cooperation with this President. We have confirmed 168 judges. We have tried in every way possible to be cooperative. We have the lowest vacancy rate in 15 years on the Federal bench. Why? Because this Senate has worked with the President to confirm 168 judges.

I understand my colleague wishes me to yield. I do so without losing my right to the floor.

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

Mr. MCCAIN. Mr. President, if my colleague would allow me to speak for 5 minutes in morning business about an important issue to me.

Mr. DORGAN. Providing that I am recognized at the conclusion of the remarks of the Senator from Arizona.

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

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

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. BROWNBACK. Mr. President, will the Senator from North Dakota yield for a question?

Mr. DORGAN. Mr. President, I yield to the Senator from Kansas for a question.

Mr. BROWNBACK. Mr. President, if I can ask for permission to speak up to 3 minutes on a personal tribute in morning business and that the floor not be lost to the Senator from North Dakota.

Mr. DORGAN. I will agree, provided I am recognized following the presentation.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

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

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, I know my colleague from West Virginia is preparing to speak. I will not be long. I will make a couple of comments to finish what I was discussing about next week's schedule.

It is true the minority party in the Senate does not schedule the Senate; the majority party does and the majority leader does. This Senate is 51 to 49. Some pretend it is 100 to zero. In the circumstances, for example, with the energy conference, I am a Democratic conferee, and we have been disinvited and not allowed to attend any of the conferences with respect to the Energy bill. That is the wrong way, in my judgment, to do business in the Senate. It pretends as if one-half of the Senate doesn't exist when you do that.

Having said all that, I understand we don't schedule the Senate; the majority leader does. We find ourselves now in the first week in November, with a number of very important appropriations bills not yet completed, with stories earlier in this week that the majority may well want to put unfinished appropriations bills in another appropriations conference and create an omnibus bill, and bring it to the Senate as a conference report so Members of the Senate would be prevented from offering any amendments to the legislation.

Well, that is not acceptable; it is not the way to do business. I don't know whether that is what is being planned. I can only tell you that is what I read early this week, as described by some majority party aides, I guess they are called.

In addition to the urgency of getting appropriations bills completed, we are

now told next week's schedule will include 30 hours of debate on judges. Actually, there won't be any business before the Senate to debate; it will just be an opportunity for the majority party to ruminate for 30 hours about how unfair it has been that 4 nominees have not been approved by the Senate—4. Mr. President, 168 judicial nominees sent to us by the President have been confirmed by the Senate, and 4 have not been. Yet you would be led to believe by all of the information spewed out of this Chamber, from all of the political vents that exist here, that somehow the Senate has just been unwilling to approve judgeships.

We have the lowest vacancy rate on the Federal bench in 15 years. Why? Because this Senate has been cooperative with this President with respect to judgeships. He has nominated and we have confirmed 168. If next week they want to spend time, in a moment when it is urgent to finish our work on appropriations bills, instead to talk about the 4 judges who were not confirmed by the Senate, I want to come to spend some time talking about the 168 judges, including 2 from my State, both Republicans, both of whom I supported and was pleased to do so—I want to talk about the 168 judges we did confirm. I want the American people to understand what our record is with judges.

My colleague from West Virginia knows about the Constitution, perhaps more than anyone in this Chamber. He has studied it, he has lived it, and he carries it in his pocket every day. His copy of the Constitution is one I enjoy seeing when he pulls it out of his pocket during debate on the floor of the Senate, because he describes it in vivid detail and gives life to this fabric of American Government. The Constitution does not say the President has a right to put a man or woman on the Federal bench for the rest of their lives. That is not what the Constitution says. The Constitution says we will provide lifetime appointments to the judiciary in the following manner: The President shall nominate, and the Senate shall give its advice and consent. So there are two steps: The President shall nominate and the Senate shall decide yes or no.

There are circumstances where a President might say: I want to put someone on a very important Federal bench who is way outside the norm in terms of behavior, thought, or experience, or whatever; and the Senate has a right to say in that circumstance we are sorry, that is a person we are simply not going to confirm, Mr. President.

That is not terribly unusual. George Washington failed to get one of his nominees confirmed—America's first President. So it is not unusual for the Senate to say, no, this is not a candidate we agree should be put on the Federal bench for a lifetime.

In most cases, the President has sent us nominees we are satisfied with, and 168 of them have been approved; 4 have not been. In the middle of this time, when time is so critical and the appropriations bills are so urgently needed to be completed, the majority wants to ruminate and vent for 30 hours in the middle of next week about the 4 who have not been approved.

I say, as my colleague from Nevada has, I make no excuses for deciding not to support the nomination of Mr. Estrada. I make no excuses for that. Mr. Estrada wouldn't answer the questions when asked by the Senate Judiciary Committee. How do I know that? Because the same day that he was a witness before that committee, the same day his nomination was considered by that committee, a nominee for a judgeship in North Dakota was there before the committee. That candidate from North Dakota, whom I supported—and, incidentally, is a Republican—is a fine judge. I was pleased to support him. He answered the very questions put to him by that committee that Mr. Estrada refused to answer.

Mr. Estrada refused to answer questions. He and the administration refused to release information that was requested. I have no reason to make any excuses for deciding to vote against Mr. Estrada. I wouldn't have voted for him and didn't vote for him. I am not apologetic about that.

If next week in the middle of all of this urgency we are going to take 30 hours and decide just to have the majority party ventilate about the four who did not get approved by the Senate, then I say—my colleague from Nevada is here—I would like to be part of a process that talks about the 168 Federal judges we did approve, all Republican incidentally—168 of them we did approve. We will get some pictures and get their story. I will talk about a few of them. I hope my colleagues will as well because the American people need to understand the story, and the story is not of the four who didn't get approved by the Senate.

The story is the lowest vacancy rate in 15 years on the Federal bench because the Senate has moved forward on judgeships and because we have confirmed judges sent to us by this President and because we have succeeded in that effort. That is the story next week. If we are going to have 30 hours for the other side to ventilate about the 4 who didn't make it, I want 60 hours to talk about the 168 we did confirm.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I wish to take a couple of moments to do a few items cleared on both sides.

UNANIMOUS CONSENT AGREEMENT—H.R. 2799

Mr. MCCONNELL. Mr. President, I ask unanimous consent that at 1 p.m., Monday, November 10, the Senate proceed to the consideration of the Commerce-Justice-State appropriations bill.

Mr. REID. Mr. President, reserving the right to object, it is my understanding that the distinguished majority whip is going to announce there will be no more rollcall votes.

Mr. MCCONNELL. I say to my friend, just as soon as he clears this.

Mr. REID. No objection.

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

Mr. MCCONNELL. I, therefore, mention there will be no more rollcall votes today.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, there are a couple of items on the Executive Calendar cleared. I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's calendar: Calendar No. 61 and 362. I further ask unanimous consent that the nominations be confirmed; that the motion to reconsider be laid upon the table; that the President be immediately notified of the Senate's action; and that the Senate then return to legislative session.

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

The nominations considered and confirmed are as follows:

FEDERAL ENERGY REGULATORY COMMISSION

Joseph Timothy Kelliher, of the District of Columbia, to be a Member of the Federal Energy Regulatory Commission for the term expiring June 30, 2007.

Suedeen G. Kelly, of New Mexico, to be a Member of Federal Energy Regulatory Commission for the remainder of the term expiring June 30, 2004.

LEGISLATIVE SESSION

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

Mr. MCCONNELL. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, has the Pastore rule run its course for the day?

The PRESIDING OFFICER. It has not.

Mr. BYRD. Mr. President, I ask unanimous consent to speak out of order for such time as I may require.

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

AN INFINITE MIRAGE AND A BOUNDLESS FACADE

Mr. BYRD. Mr. President, through its shortsighted actions, this administration perpetuates an infinite mirage and a boundless facade. This administration hopes to fool the American people into swallowing its wrongheaded policies with no questions asked. These

policies have a superficial appearance of reality, but they are beyond comprehension—beyond grasp. They hover like a mirage on the horizon. We are lulled into believing that if we just stay the course, we will eventually reach some sweet, glorious watering hole. However, the truth is that there is nothing tangible, nothing solid, nothing with form or substance on the horizon.

Regardless of whether it is Iraq or an energy bill, one need only connect the dots to see that the same questionable tactics are readily apparent. When the President announced to the world, ''Either you are with us or against us,'' he alienated many potential allies abroad. The administration uses the same posturing in terms of an energy bill. It is either the administration's way or no way, as it opposes any alternative approaches that do not fit into its little black box.

There was a horrible rush to pass the Iraqi resolution in this body last year. This administration is using the same tactics to dictate the terms of a very bad energy bill this year. This facade is all too obvious as the White House's only goal is to pass a bill seemingly regardless of its substance or lack thereof.

The administration's national energy policy plan will do about as much to improve the Nation's energy security as the administration's invasion of Iraq has done to stem the tide of global terrorism. In the past, the administration attempted to make a case that linked September 11 and Saddam Hussein. These links have failed to materialize, but the administration is still trying to make that link. Not one Iraqi was among the hijackers of airplanes on September 11—not one. So it must be a matter of great chagrin to the administration that it has been unable to bring forth the evidence of that linkage.

Predictably, the administration is now attempting to make the same connections between its national energy policy and a comprehensive energy strategy. This link will also be proven groundless in the not too distant future.

For many years, the Middle East has been a hotbed for a number of reasons, especially because of the Israeli-Palestinian conflict and the continuing U.S. military presence in the region, but an underlying reason for our continued presence in the region is for the protection of our oil lifeline. We likely would not have such close ties to the Middle East if it were not so important to our economic base. Because of this tethering, we are being pressured into passing an energy bill. Unfortunately, even if this Congress passes the administration's prescribed energy bill, that will do little, if anything, to reduce our dependence on foreign oil.

Instead of striving to disentangle ourselves from this foreign oil dependency, the Bush administration seems intent on sinking our military and energy fortunes deeper and deeper into the hot sands of the Middle East.

I have spoken on this floor before regarding my concern for this Nation's energy future. I have also addressed the Bush administration's lipservice and corporate coddling, which is the sum total virtually of its energy policy. As a recent report from the General Accounting Office concludes, the Vice President's national energy policy development group did not solicit a broad range of views. That group never sought to project future energy demand or engage future sources of supply. There was no plan with specific goals and objectives designed to ensure energy diversity. But the Bush administration insists it has an energy policy.

A lot of energy went into producing it, and it has expended much energy to get its bill passed. In fact, just before the lights went out in Manhattan, Cleveland, and Detroit, Vice President CHENEY was quietly working with the Republican leadership to void key electricity provisions that this body was about to pass.

I say to my colleagues, all is not lost. Help is on the way. While this Nation's citizens were stranded and sweltering in darkened subway tunnels in New York and without drinking water in Cleveland and Detroit, more rewards were being handed out. Yes, while the citizens of those cities suffered, the administration was very busy. While our electricity system was in a shambles, the Bush administration was eagerly handing out hundreds of millions of dollars in sole-source contracts to Halliburton—have my colleagues heard of that name before?—and Bechtel to rebuild Iraq's water and electricity infrastructure. Oh, the irony.

Even more telling, in its statement of administration policy, the White House told energy conferees to trim the estimated $50 billion-plus cost of the energy bill because the pricetag was excessive.

Let the American people hear this: We can cut taxes for the rich, we can spend $21 billion just this year to rebuild Iraq's infrastructure, but the energy pricetag in the next decade at home is too expensive. The truth is, regardless of its costs, the Bush administration will never fully fund the programs in an energy bill as the White House is too distracted by other so-called priorities.

The Center for Responsive Politics reports that the energy industry gave more than $2.65 million to the Bush-Cheney campaign in 2000. The oil and gas industry gave 68 percent of that total. Not surprisingly, media accounts are ripe—ripe, I say—with stories of the administration's contributors who have been tripping over themselves to curry favors for their particular energy interests.

What about other groups? Were the interests of the State and tribal interests, labor unions, consumer groups, and environmental organizations at the table?

A lack of consensus on energy legislation has rightfully raised concerns that the final product will be but a patchwork of compromises that do not truly solve our urgent problems.

The Republican majority and the White House have put together what amounts to a ''pig in a poke'' energy bill that includes a number of items that remain enormously controversial and that have little to do with building the bipartisan consensus essential for the development of a national energy strategy. The legislation passed by this Senate last year and this year has been largely ignored.

Now the majority is preparing to ram this hodgepodge through the conference, and we are being forced to swallow it, hook, line, and sinker. This is no way to legislate and it certainly is no way to develop such an important national policy.

We cannot continue to conduct the Nation's business in this way. The stakes are too high. Partisanship alone is threatening enough to our ability to develop comprehensive solutions to our energy problems, but it is not just partisanship that is reason for worry. It is the utter contempt with which this Bush administration apparently views the role of the legislative branch.

As the General Accounting Office has learned, this administration simply will not tolerate legislative inquiry. This administration will not tolerate fact-finding. Requests for information are often simply denied. There is no room for debate, just dictums. We are not expected to stand on this floor and offer amendments. We are urged to sit quietly, we are expected to sit quietly, and wield the rubberstamp. The people of West Virginia did not send me here to be a rubberstamp. I am certainly not a rubberstamp.

Energy policy, in my estimation, drives so much of our economy and defines so much of our national prosperity and security that backroom bargaining can threaten our Nation's future.

The administration used numerous promises and assumptions to sell the Iraqi war to the American people. We were assured that the postwar construction would largely be paid for with Iraq oil revenues and the cooperation of other nations—nations that got the back of our hand. But the President now tells us we cannot count on that money in the short term and the American taxpayers will have to foot the bill.

We are hearing the same type of rhetoric now. We heard claims that the administration's energy bill would fix all of our energy problems. I hope the American people are smarter than that because this energy bill is no panacea, and it could very well turn out to be a Pandora's box.

We need a comprehensive approach to our energy policy. What do I mean by comprehensive? A comprehensive approach fully integrates four fundamental principles: energy security to encourage fuel diversity; fiscal soundness to increase economic growth and

the efficiency of production; consumer protections to guard against fraud, market manipulation, and abuse; and environmental sensitivity to minimize the impacts from wastes and emissions.

These are essential elements for any comprehensive energy policy. These elements must be fully integrated through a policy that is designed to maximize fuel diversity and efficiency of production while minimizing consumer abuse and environmental degradation. These elements could provide a complementary path forward, but this Energy bill is a significant detour.

With these guiding principles in mind, we must then begin to make the hard choices. We must develop a truly strategic plan. Planning requires that we decide how much, to what extent, and when actions must be taken. It requires the development of criteria so the progress can be measured.

For the past three decades, the United States has struggled to find and secure its energy future. Administrations since Richard Nixon have been trying to craft a sensible energy policy, with some small successes, but mostly with little significant progress to show. All too often, America's energy agenda has shifted—lurching first in one direction, then in another. The net effect has been that the Nation has grown more and more dependent on foreign oil, making America's energy security increasingly vulnerable to manipulation and terrorist attack.

This Nation has not had a serious, thoughtful energy strategy or a comprehensive set of energy policies for a long while. Too often, the Government has, instead, reacted to shortages, dislocations, and various energy crises. For example, the Government has tried to control oil and natural gas prices, which only served to exacerbate supply shortages. For a period of time, one administration tried to prohibit the use of natural gas and forced the use of coal for power generation. Two decades later, another administration discouraged the use of coal and Federal priorities shifted to the increased use of natural gas. Today, the Nation finds itself caught in what Federal Reserve Chairman Alan Greenspan calls ''the gas trap.''

The energy bill soon to be before this Congress is primarily another reactionary effort. While there may be some strong trees planted, it is by no means a healthy forest. From past energy efforts, only a few actions, such as creating the Strategic Petroleum Reserve and the Clean Coal Technology Program, have proven to be truly farsighted. I fear that most of this energy bill will continue a business-as-usual approach.

Furthermore, we must, once and for all, realize that our energy and climate change policies are two sides of the same coin. Yet we are doing little, if anything, to address seriously these critical links. This energy bill includes nothing substantial to address either global climate change or advanced clean energy technology exports. If these and other key provisions are not included, why should I support such a flawed, misguided energy conference bill?

Furthermore, the administration has been seeking my support for its so-called FutureGen project, claiming this purported $1 billion, 10-year proposal would build one large powerplant as an experiment to address climate change. My support for this project is largely contingent on identifying the long-term resources for FutureGen and knowing that it will not erode other critical energy programs. So I have to say that, if the administration is expecting my support for FutureGen, then, in coming years I expect that the administration will support my climate change and international technology transfer provisions as well. If the administration is still around.

Global warming is an Achilles' heel for this White House—one among other Achilles' heels. The President has shown no desire to address this problem in an energy bill or anywhere else.

In the end, the President would dearly love a showy Rose Garden ceremony in which to sign an energy bill and thus have a 2004 campaign press release to tout its so-called success. But, given this administration's track record, an energy bill would simply be another empty soapbox for the President to stand on to announce a bankrupt deal.

I say, where have we seen that before? While the Congress has passed bills and supported the Bush administration's rhetoric, the necessary resources to carry all this out never materialize.

The American people deserve much better than this. As the blackout of August 14 vividly demonstrated, this Nation's energy system—which is the lifeline of our economy and national security—is on life support. As we struggle to define and implement a national energy policy needed to address these issues, we again find ourselves on a collision course.

We need a new framework based on a consistent and cohesive set of policies. But we must recognize that we must get to that critical juncture. This new framework must be designed to strengthen the law, not gut it. Most importantly, as we approach this crossroads, we must seek to fully integrate our energy and environmental policy goals and objectives in a complementary way.

We were told we had to rush into Iraq to contain Saddam's WMD programs. Now we are being told this energy bill will reduce our dependence on foreign oil, counteract increasing fuel prices, and do so many other things.

Americans should not be fooled. They will not. There are few, if any, benchmarks or yardsticks from which we can truly chart our progress. Sadly, such milestones are anathema to this administration. At the same time, we have squandered a huge opportunity. The bipartisan cooperation in the development of this energy bill was purely superficial. Soon this Senate could be asked to vote on this legislation. There is pressure to cajole Members to swallow hard and pass it. Despite some solid provisions, why should I be a party to this boondoggle?

A cherry-picked energy plan based on soliciting big industry campaign contributions is a bankrupt policy. It takes this Nation nowhere, and it puts our Nation's future at risk. It is time that the dots were connected. The same pattern by this White House continues to repeat itself. That pattern is statements of policy that build on infinite mirages and boundless facades.

I yield the floor.

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

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

MORNING BUSINESS

Mr. DEWINE. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators speaking for up to 10 minutes each.

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

HONORING OUR ARMED FORCES

Mr. DEWINE. Mr. President, I rise today, in the few days before Veterans Day, to pay tribute to one of America's and one of Ohio's fallen sons. Twenty-seven year-old Army Specialist James Christopher Wright, who served in the 4th Battalion, 42nd Field Artillery Regiment, of the 4th Infantry Division, passed away on September 18, 2003, while trying to secure a hostile area near Tikrit, Iraq.

James Wright—known as Jimmy by his family and friends—was from Delhi Township, OH. In the early 1990s, he graduated from Oak Hills High School and Diamond Oaks Vocational School.

Growing up, Jimmy was a fun-loving kid. Friends say he was always ready with a smile or a joke. He could make any situation seem comfortable.

He could put people at ease.

Christina Schwaller, who attended Oak Hills High School with Jimmy said that he was ''very outgoing and lovable, very much the clown. He was always laughing—you never had a bad moment when he was around.''

Jimmy also loved cars. It's a love he shared with his older brother, Eddie. When Jimmy was still in high school, and Eddie had just graduated, they bought low-riding pick-up trucks and spent hours upon hours outfitting them. In Iraq, Jimmy was the proud driver of a Humvee. Today, Eddie drives a Porsche with a memorial to his brother painted on the front hood.

In 1996, Jimmy enlisted in the Marines and served four years. In that time, he toured in Bosnia, Greece, and Italy. Jimmy felt strongly about serving our Nation. He had a deep, abiding sense of duty—something he learned from his family. His father, Edward, served in the Army for 20 years and did two tours in Vietnam. He learned from his family about sacrifice and service.

After his tour with the Marines was over, Jimmy decided to settle down for a short time in Delhi Township and later Waco, TX, with his wife, Alina, whom he had met when they were both stationed at Fort Bragg in North Carolina. She, too, had been a Marine. As they were settling in to their new civilian life, the world turned upside-down with the tragic terrorist attacks of September 11, 2001. Once again, Jimmy and Alina felt the familiar pull of duty—duty to the victims of September 11th, duty to their families, duty to our country. Alina remembers Jimmy saying then that ''it was time to put the uniform back on. He couldn't just sit back and not do anything.''

Jimmy and Alina both enlisted—this time into the Army. Jimmy was deployed to Iraq on April 1, 2003. Three weeks later, he learned that his wife was pregnant with a baby boy whom they named Jamison Edward. Five months later, Jimmy Wright gave his life fighting to secure the safety and freedom of the Iraqi people—fighting to secure a peaceful world and future for his unborn son. As his brother Eddie said, ''When Jimmy died, he was doing something he loved. I'm proud of my brother. He's a hero.''

He received the Bronze Star, the Purple Heart, the Armed Forces Services Medal, and the Good Conduct Medal.

Specialist James C. Wright did not have to re-enlist. He did not have to fight and die for us and for his son, Jamison Edward. But he did. As Reverend Thomas King said at Jimmy's memorial service in Ohio, ''Jimmy knew the dangers he faced, but he never backed down.'' He felt it was his duty—his calling—to serve. He believed in what he was doing—in what he was fighting for. He wanted his son to live in a world without terrorism—a safe world—a world of freedom and liberty and hope.

Pliny the Elder wrote that ''hope is the pillar that holds up the world.'' Jimmy was a man of courage, of love, of duty—and his broad shoulders of hope will continue to hold up the world safely above our heads.

He will continue to be that pillar as we remember his life—as we remember how he followed his heart, lived a life full of love, and dutifully responded to the call of his country.

Left to cherish and honor his life are his wife, Alina; his unborn son, Jamison Edward; his parents, Edward and Barbara; his two brothers, Eddie and Mark and their families; and his grandmother, Josefa Wright. Let me say to all of them that you all remain in my thoughts and prayers.

I thank the Chair and yield the floor.

Mr. ALLARD. Madam President, today, I rise to honor recently fallen soldiers in Iraq and to recognize the mission these men and all Fort Carson soldiers have been accomplishing since the conflict began.

This past Sunday the State of Colorado lost four of its courageous army warriors when a Chinook helicopter assigned to the 12th Aviation Brigade and attached to the 3rd Armored Cavalry Regiment crash landed outside of Baghdad. These were brave and loyal soldiers defending the principles of freedom and liberty and fighting the terrible war against tyranny and terrorism.

This helicopter was shot down in the single deadliest attack on American troops since the war began. This attack killed a total of 16 troops and injuring another nineteen. It was transporting the troops to Qatar. Some were headed home for leave while others were getting much needed rest before returning to Iraq to wage peace and rebuild the country after more than twenty years of neglect and oppression.

As I learn more of the four men from Fort Carson who lost their lives, my heart swells with pride. I am very proud of the commitment and sacrifice these soldiers gave to our country and our way of life. Yet, I am also saddened. I am deeply grieved knowing that for each of the brave souls have a family left behind.

It is a somber realization that some parent or spouse will receive the worst possible news. Men in dark green uniforms will show up to explain the unexplainable. As honorable as this task is, no one from the army can comfort the families of Specialist Darius Jennings, Specialist Brian Penisten, Sergeant Ernest Bucklew or Staff Sergeant Daniel Bader. These were good men and proud Americans who were pausing briefly in their duty to improve the conditions in Iraq and fully expected to return soon to rejoin their units.

This tragedy is magnified when you learn of the stories behind these young men and the lives they left behind.

Sergeant Dan Bader was returning to Fort Carson to see his wife and fourteen-month-old daughter. Last spring he tearfully kissed his wife and child goodbye and deployed for Operation Iraqi Freedom promising to return soon and was ever more eager to see his daughter grow with each passing day. He was a towering man of six foot three who was not afraid of anything. He fought for his family, for his unit and for America. His daughter will grow up knowing her father was a hero but not knowing her father.

Specialist Brian Penisten was also coming home but he was coming home to start a new family. He was coming home to his fiance in Pueblo, CO so they could get married this month. He called her before heading to the helicopter and told her everything was okay and ended the conversation with the words, ''I love you Mrs. Penisten.'' But now instead of a wedding his two families will be attending a funeral for this fallen hero.

This attack represents another example of the cowardice and terror tactics employed by Saddam loyalists and the foreign insurgents intent on our failure to bring peace and freedom to Iraq and the region.

They will not succeed. Both the American troops and the Iraqi people are working hard to make the country better. Everywhere you turn, the message is the same. The Iraqi citizens are happy to have us there and our troops understand why we must be there. Whether you count the social programs being worked by our soldiers, the re-enlistments of our Fort Carson soldiers or the over all morale of the troops, the message is clear. We are committed and will not quite until our task is done.

Some of these troops have been in the country since before Christmas of last year. This deployment and combat environment could easily destroy morale and incentive to re-enlist. That is not so for these fine soldiers of Fort Carson.

Even through Sunday's disastrous loss, the spirit of Fort Carson stays strong. The executive Officer for the 3rd Armored Cavalry, said after losing his four men, that, ''morale is saddened and humbled but we remain resolved to continue the fight.''

The unit's 5,000 soldiers serving in Iraq don't have time to be horrified or mourn the dead. They have a job to do.''

He added that they were obviously saddened by the events but ''we are soldiers, cavalry troops and have to execute the mission given to us.''

There has been plenty of discussion lately of America's resolve and commitment to seeing this through. Let me tell you that the men and women serving in Iraq are not confused and know how committed this country is to ensuring that democracy flourishes in Iraq.

The men and women of the 3rd Armored Cavalry Regiment are still fighting the war on the Syrian border but that has not deterred them from performing great measures for the Iraqi people. The 3rd Cavalry helped rebuild a town's schools and hospitals with the help of the local mayor and town council.

Another program brought bookbags full of school supplies to over 200 local youth. This is a sharp contrast to the Hussein regime who did not provide basic education for all children.

One of the American commanders said ''most people in the communities here are peaceful and just want to resume moral lives but the actions of the aggressors place them in a position where they feel they can't publicly support coalition forces.'' And the Iraqi mayor said ''we are very grateful for what they have done.''

Fort Carson has retention goals that it must meet to fulfill its mission. This is true during war as well as during times of peace. Fort Carson has deployed over 12,000 troops to Iraq since last year. That constitutes 80 percent of its troops. Men and women from the 3rd Armored Cavalry Regiment, 3rd Brigade Combat Team, 10th Special Forces Group and 7th Infantry Division have all supported Operation Iraqi Freedom.

Surprisingly, though the 3rd Armored Cavalry is still deployed in Iraq, the unit has not only reached its retention goals, it has greatly exceeded them. In the last quarter of this past year 294 soldiers re-enlisted while the objective was 129. This unit is retaining almost three times its goal for that period and for fiscal year 2003. Over the year, the regiment had 834 soldiers reenlist though the goal was 554 reenlistments.

It is clear to me that the soldiers who are laying their lives on the line; they are committed to this cause; and we need to follow their lead. Secretary of State Colin Powell, while leading the first gulf war, said that the truly great leaders were also great followers. We in the Congress need to follow the lead of men and women from Fort Carson and commit to this cause. We must not waver when it is politically correct to do so, when the elections are near, or when the costs are high.

The cost of failure is greater than any supplemental bill brought forward to this body. The cost of failure is immense. The cost of failure will be realized not only here but through out the Arab world. Iraq is a unique opportunity to show that freedom and democracy can flourish in the region.

This mission is that important.

Any loss of life is tragic and we must reflect on the ultimate sacrifice we ask of our soldiers, sailors, airmen and marines when we send them into harm's way. We always hope that every person that deploys to a war zone will return home to their parents, wives, children and community. Today we have four families who will be met by the dark green uniforms that they all dread.

We can never bring SP Darius Jennings, SP Brian Penisten, SGT Ernest Bucklew or SSG Daniel Bader back to their families alive. As much as we would want, that is not possible. What Fort Carson is doing is 'continuing the fight' and that is exactly what this Congress and this country needs to do. We need to continue the fight even when that means more money appropriated, even when that means a new round of deployments to Iraq, Afghanistan or other yet to be determined hot spots, even if that means standing up to the world community and demanding they do their share.

The war on terror is not going to be won over night. The terrorists have been honing their skills and will not quit because we ask them to. Surgical strikes to obscure targets will not deter them. United Nations resolutions with no force deployment will not dissuade them. What will convince these international thugs is a commitment to stand firm in our responsibility and not second guess our actions when things get difficult.

I stand today to honor these four fallen soldiers, each of the injured, and all of the men and women of Fort Carson. Your commitment and sense of duty is a commendable example to all Americans. I salute Fort Carson and everything the soldiers stand for, so let this body recognize SP Darius Jennings, SP Brian Penisten, SGT Ernest Bucklew, SSG Daniel Bader and all of Fort Carson left to carry on the fight and more importantly carry on the peace.

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

The PRESIDING OFFICER (Mr. ENZI). Without objection, it is so ordered.

AIR QUALITY AND THE BUSH ADMINISTRATION

Mr. JEFFORDS. Mr. President, I stand here to raise some questions and issues of importance.

There are so many difficult problems that Americans must face every day. These include crowded roads, finding adequate and affordable health care, getting a good education for their children, and improving their economic situation.

I believe our constituents want and should expect the Federal Government to do whatever is possible to minimize these burdens with minimal intrusion.

I also believe that Americans want to trust that the government is working to protect them from involuntary risks or dangers that will affect their lives, like defective products, unfair trade practices, and corporate fraud.

Or, perhaps one of the public's greatest expectations about such risks is that the Federal Government will effectively stop pollution that would shorten lives, put people in the hospital or otherwise harm their quality of life or their earning power. Not to speak of cancer or developmental damage that might occur to their families.

It is my duty, as a Senator from Vermont and as the ranking member of the Environment and Public Works Committee to see that the Federal Government meets the public's expectations. Sadly, it is my duty to say that in this matter the administration has grossly failed those expectations and has betrayed the public's trust.

I am not here to simply be critical. I am here representing those people, those communities, those populations who are sufferring because this administration refuses to acknowledge that air pollution causes illness and death. Actually, maybe they do know this, but they're willing to look the other way at the misguided request of big polluters.

There is a reason we have a Clean Air Act. To protect human health and the environment. I can not imagine any member of Congress or any elected or appointed official that would say that we don't need a Federal Clean Air Act. But this administration is getting close to that point.

I want my colleagues to know that I will be vigilant in pointing out places where this administration is at war with the Clean Air Act. And they are numerous.

I plan to work vigorously to defend the Clean Air Act throughout my tenure in this body. I will not bend on this. I will fight efforts to undermine the act in the energy bill, in appropriations bills, in any venue that members may look for an opportunity.

Mr. President, 32,000 or more people are dying every year due to power plant pollution. This is not a new number. It was first reported in the year 2000 and is based on reliable, peer-reviewed science. That is a crisis by anyone's definition. It is a call to action.

But, instead of taking urgent steps or really any steps at all to control that pollution, this administration has given the dirtiest, oldest power plants a permanent exemption from installing modern controls that would cut millions of tons of pollutants.

Not only will this administration not force these power plants to cut pollution in the future, but they announced earlier this week that they would no longer penalize those power plants and refineries for violating pollution limits in the past.

This reversal is stunning and unprecedented, to my knowledge. Just weeks ago, we were assured that the administration would continue to prosecute polluters who violated Clean Air rules in the past. Now they are saying let's just pretend nothing bad ever happened.

That is like saying, ''Let's pretend that the thousands of lives shortened by increased pollution from those illegal activities don't matter.''

The combined effect of the change in rules and the evisceration of enforcement cripples the Clean Air Act.

This Bush administration is trying to unilaterally reverse the great progress in air quality that we have made due to the bipartisan agreement in the amendments to the act passed in 1990.

I hope and will be working to stop this reversal through the courts or by other actions.

The so-called ''clear skies'' proposal that the Administration has advertised with taxpayer dollars is too little and too late.

It puts off real reductions in smog and acid rain causing pollutants from power plants for many years beyond what the public's health demands.

It puts them off beyond what the Clean Air Act could do right now if

only the Administration had the guts to stand up to the polluters' lobbyists and use the act constructively.

At the same time that the President's proposal defers any real and significant reductions in pollution, it immediately suspends or cuts back on the important parts of the Clean Air Act that work right now to protect local air quality from upwind sources and to push emissions control technology forward.

By the agency's own analysis of clear skies in the year 2020, hundreds of coal-fired units representing tens of thousands of megawatts, will still be operating without modern pollution controls.

This means that people downwind of those plants will continue to suffer in communities across the nation, in 20 or more states like Alabama, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, and on.

This just does not make sense. The administration's proposal still leaves many many plants uncontrolled 18 years from now.

It defies the imagination that we won't ask those power plants to use modern controls for a minimum of eighteen years. The technology is available now and it doesn't cost that much.

And yet, this delay in the President's proposal and its suspension of parts of the current Clean Air Act, will result in more than 8,000 people downwind of those plants dying prematurely every year when compared to my bill, the Clean Power Act, or to a vigorous implementation of today's Clean Air Act.

I have been prepared, as I have noted several times over the last 2 years, to work with the administration to work on compromise legislation. My offer has been met with deafening silence.

That is unfortunate for all those whose lives will be shortened, for the additional acid rain that will fall, for the asthmatic children who will suffer, for the increase in global warming, for the smog-blocking scenic vistas, and for the new lakes and fish contaminated by mercury. But that silence is not unusual.

I have come to expect that the administration will not answer straightforward questions or provide simple technical assistance.

And I have come to expect that the administration will not honor the public's or Congress' right to obtain documents and information on vital environmental policy matters.

So it was not a surprise to me that EPA has refused to honor its promise to analyze the impacts of controlling mercury emissions at various levels from powerplants. If they did a decent job, it would show that the Clear Skies proposal is weak and far less effective than today's control technology. Today's control technology—it is even worse than that.

It is also not a surprise to hear rumors that EPA and the utilities are seeking another delay in the legal deadline to control mercury and other air toxics. As it is, this deadline is already many years later than required by the Clean Air Act.

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

Mr. JEFFORDS. Mr. President, I ask unanimous consent to have an additional 5 minutes.

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

Mr. JEFFORDS. What is surprising is that anyone who has children would consider such a delay. Mercury, much like lead, can cause significant neurological and developmental damage to fetuses when a mother consumes normal quantities of fish. It can also increase the risk of heart, kidney and liver effects in adults. The National Academy of Sciences has documented these risks well. Let me repeat that. The National Academy of Sciences has documented these risks well.

However, in case the mothers and fathers who are considering extending this deadline or proposing ineffectual rules, I have joined with 12 other Senators in sending a letter to the Office of Management and Budget and the EPA. The letter explains their legal and moral duties, in the event that they have been forgotten. I ask unanimous consent that the letter be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. JEFFORDS. Mr. President, my inescapable conclusion, unless newly confirmed Administrator Leavitt can change it, is that the Bush administration does not care about the burdens that polluters lay upon the public.

Perhaps the administration does not care about the deathly ill senior citizens suffering from pollution-induced heart or lung disease, or the parents who are struggling to help their learning disabled or physically handicapped child cope with everyday life, or the 150 million Americans who are breathing unhealthy air.

Whatever their reasons, this administration is making it harder to breathe, to see, and to trust.

Mr. President, I yield the floor.

EXHIBIT 1

U.S. SENATE,
Washington, DC, November 6, 2003.

Hon. JOSHUA B. BOLTEN,
Director, The Office of Management and Budget, Washington, DC.

Hon. MICHAEL O. LEAVITT,
Administrator, U.S. Environmental Protection Agency, Washington, DC.

DEAR DIRECTOR BOLTEN AND ADMINISTRATOR LEAVITT: We are writing to urge the Office of Management and Budget and the Environmental Protection Agency to promulgate expeditiously a proposed rule to set maximum achievable control technology (MACT) standards to reduce utility emissions of hazardous air pollutants (HAPs), including mercury, as required by the Clean Air Act. As you may know, this proposed rule must comport with, at a minimum, the requirements of sections 112 and 307 of the Clean Air Act, the Administrative Procedures Act, Executive Order 12866, and all applicable settlement agreements. News accounts suggest that the rule is being written to include an arbitrary reduction requirement and compliance date that are not justifiable given the Clean Air Act's specific language, and in a manner that may not produce a defensible proposal.

The Clean Air Act Amendments of 1990 require EPA to promulgate national technology-based standards for utilities that emit hazardous air pollutants, if deemed appropriate and necessary by the Administrator. After many years of Agency delay on that utility MACT standards rule, a settlement agreement was entered into between EPA and environmental organizations. The settlement agreement required EPA to sign a determination of whether regulation of utility HAP emissions is appropriate and necessary, and to follow a positive determination with a proposed and finalized rule, by dates certain. Pursuant to that settlement agreement, as last modified in November 1998, EPA Administrator Carol Browner finally made a regulatory determination in December 2000 that it was appropriate and necessary to regulate utility HAP emissions through the MACT regulatory process. Under this agreement, EPA must now publish a proposed utility MACT rule by December 15, 2003, and a final rule by December 15, 2004, with the compliance date set for December of 2007.

In general, the Clean Air Act Amendments of 1990 require EPA to set a MACT standard that achieves the maximum degree of reduction in emissions of hazardous air pollutants from all new and existing major and area stationary sources, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements. But, section 112 of that Act defines MACT for new facilities as an emission standard no less stringent than what is achieved in practice by the best-performing similar source for which the Administrator has emissions information. Existing sources are required, at a minimum, to meet the average emissions of the best performing 12% of existing units, though EPA can set a more stringent standard. Section 112 (f) also requires EPA to assess the remaining (i.e., ''residual'') risks posed to human health within eight years after the promulgation of MACT standards, and regulate sources of HAPs to provide an ample margin of safety to protect public health. The EPA has moved responsibly in the past to regulate mercury emissions from all major non-utility sources, leaving utilities as the largest source of mercury air emissions in the country.

According to data collected by EPA and presented to industry groups in December 2001, there are technologies available today to reduce mercury and other HAPs from utilities in an efficient and economical manner. In fact, EPA's own analysis shows that several of today's technologies can control mercury emissions from coal-fired utilities by 99% for new sources, and by 98% for existing sources, without subcategorization by coal type. The upcoming utility MACT proposed rule must reflect this technological capability. Furthermore, given that this technology is already available today, there is no defensible reason to delay for any source the compliance date of December 2007, a deadline mandated by both the Clean Air Act and the settlement agreement.

Section 112 (d) of the Act allows for subcategorization of the standard, but only by class, type, and size of source, assuming it does not result in a delay of the compliance date. In other words, subcategorization is allowable for physical differences in plant design. We are concerned that EPA may be

considering subcategorization by coal type, which does not constitute one of these allowable distinctions. Including such a subcategorization in the MACT rule would not be legally defensible.

As you know, the Executive Order on regulatory review (No. 12866) enhances planning and coordination with respect to new and existing regulations, with the understanding that the, ''. . . American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being. . . .'' In particular, E.O. 12866 states that in deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits, including potential economic, environmental, public health and safety, and other advantages, as well as distributive impacts and equity.

Despite that directive, we are concerned that EPA and OMB may not be considering a full range of regulatory options that includes accurate implementation of the Clean Air Act, namely, a standard based on technologies available today that can achieve a 98%+ reduction in mercury emissions. We expect the upcoming proposal to reflect what the law requires by offering either the most stringent technology standard for public comment, or at least a range of options that includes this most stringent standard. We also expect that the regulatory impact assessment, as required by the Executive Order, which accompanies the proposed rule to include an assessment, and the underlying analysis, of the costs and benefits (including reductions in other air pollutants such as fine particulate matter) of potentially effective and reasonably feasible alternatives to the proposed rule that have been identified by the public.

We are also troubled that the Clean Air Act Advisory Committee established under the Federal Advisory Committee Act to advise EPA on development of utility MACT standards has not received promised analyses and has been inappropriately and abruptly excluded from the regulatory process. EPA worked with industries, environmental organizations, and State and local agencies in the context of these FACA workgroup meetings over a two year period. During these meetings, environmental stakeholders requested specific considerations and mercury reduction scenarios to be included in a model the Agency was developing.

The Agency promised to incorporate group recommendations and deliver findings of this updated modeling to the workgroup by March 4, 2003, yet the analysis was not available by that time. The Agency promised then to share the analysis by April 15, 2003, yet the analysis was again not available, and EPA staff abruptly cancelled that day's workgroup meeting, saying, ''We will get back to you regarding a future meeting.'' The utility workgroup was never able to schedule a subsequent meeting with the Agency, and has still not received the modeling analysis promised almost eight months ago. This failure to deliver promised analysis is unacceptable, and the abrupt exclusion of stakeholder involvement is not good governance.

We expect the Environmental Protection Agency and the Office and Management and Budget to propose utility MACT standards on schedule. We expect that proposal will use the best performing facilities as the guide in setting standards that obtain the maximum reductions achievable. We also expect EPA to deliver on its promises by swiftly completing and distributing to the workgroup the modeling analysis for group-specified mercury reduction scenarios. Further, we expect EPA to continue to work in good faith to incorporate public comment on the proposal and finalize a thoughtful rule by December 15, 2004, while maintaining the December 2007 compliance date. To do any less would be legally indefensible, and would prolong damage to the public's health.

It is well documented that mercury from utility air emissions endangers our health and environment by depositing into our lakes, streams, and oceans and bioaccumulating in the fish we eat. The National Academy of Sciences has confirmed that fish consumption by pregnant women can lead to neuro-developmental damage in fetuses, and that all other adults can be put at greater risk of heart, kidney, and liver effects. Due to this public health threat, 44 States now post advisories warning the public about the risks of fish consumption. Dozens of other toxic air pollutants are released in significant quantities from power plants as well, including arsenic, cadmium, and lead, many of which are known carcinogens. The Clean Air Act does not allow for promulgation of a rule on this matter that is ineffectual in reducing to the maximum extent achievable the major HAPs emitted by utilities.

Thank you for your attention to this matter. We look forward to your prompt response.

Sincerely,

Jim Jeffords, Olympia Snowe, Joseph Biden, Ted Kennedy, Hillary Rodham Clinton, Jack Reed, Dick Durbin, Patrick J. Leahy, Susan M. Collins, Frank Lautenberg, John F. Kerry, Lincoln D. Chafee, Charles Schumer.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I ask unanimous consent to speak in morning business for as much time as I may consume.

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

UNFUNDED MANDATES AND THE INTERNET TAX NONDISCRIMINATION BILL

Mr. ALEXANDER. Mr. President, Mr. CARPER, the Senator from Delaware, is on the floor. He may want to speak in a few minutes. I have a few comments I would like to make about the debate we are having about unfunded mandates and Internet access taxes.

First, I thank Senator MCCAIN, the chairman of the Commerce Committee, who has been working very hard to help bridge what is a fairly big philosophical difference of opinion some of us have, and I express my appreciation to the leader, BILL FRIST, because he created some time today and last night for us to debate and talk about the issues. I think we have made some progress.

But here is where we are. As with most of our debates in the Senate, we have two valid principles in which most of us believe: First is, no taxation of Internet access. I have yet to run into a Senator who really wants to tax Internet access. Virtually all of us are willing to keep State and local governments from taxing Internet access.

I am a little bit of a purist on unfunded Federal mandates, with Washington politics telling State and local officials what to do, but the amendment which I have offered, and which Senator CARPER and others have joined in, would ban State and local government taxation of Internet access.

That is the first principle. We want the Internet to grow. We don't want local taxation. We don't want taxation that discriminates.

The second principle is, we don't want unfunded Federal mandates. That may be a little bit of a Washington word, but most people know what it means. It means Senators and Congressmen who come to Washington and pass laws and claim credit and send the bill to the school boards and Governors and mayors. Nothing makes local officials madder. This Congress, to its great credit, since 1995, has been very resolved against unfunded Federal mandates. So we don't want to tax Internet access and we don't want unfunded Federal mandates.

We haven't found out how to put the two together. We have offered a solution. There are really two basic ones out there. Ours would be to just take the current law, the current ban on taxing Internet access or allowing State and local governments to make that decision, and extend it for 2 years, and then to make a change to minimize discrimination between providers, providers being phone companies and the cable companies. That is our proposal.

The proposal on the other side was to create a much broader definition of what we mean by Internet access which would create a huge unfunded Federal mandate and take away, we believe, billions of dollars from State and local government tax bases, cause them to cut services or raise taxes on many other things, and make it permanent. That is the proposal.

Our argument is that our 2-year extension of the current law, with one adjustment to level the playing field between telephone companies and cable companies, is better for the country than a permanent installation of a very broad definition. So the issues are duration and definition.

The reasons for our amendment are these. One, we want to preserve the original intent of the Congress. The 1998 law was to keep the basic Internet access tax free. By that we mean, when you hook up your computer to AOL, the intention is that that is tax free. In our amendment, even as the telecommunications industry moves more on to the Internet, that would continue to be tax free. It is really a significant infringement on State and local prerogatives to decide what taxes to raise

on their own. We want to make sure no one will be able to tax e-mail or surfing the Web. We want to make sure that States don't lose the bulk of their telecommunications revenues. Those were our major goals.

The opponents have raised many objections to these ideas. They say the Internet is so valuable that it should not be taxed. Well, we don't tax it any more than it is now. We don't allow taxing any more than it is now. And it makes me wonder. I agree the Internet is valuable. I supported the first moratorium. But it is a grown-up business now. It is no baby in a crib. We had 3 years and then 2 years. Now we are talking about another 2 years.

The telephone is valuable. Television is valuable. Airplanes are valuable. The automobile was a great invention. We don't tell State and local governments what to do about their tax policy for those businesses. The Internet is not a baby in a crib anymore. It can at least afford to hire some of the most expensive lobbyists; we know that.

Then they talk about interstate commerce, that we are messing around with interstate commerce when we talk about telling States what to do about taxing Internet access. I read the Constitution again to make sure I was right. Article I, section 8, says Congress has the power to regulate commerce among the States, but it doesn't say exactly what to do about it. It means Congress can impose limits. They can do some things.

There is also another provision called the 10th amendment which reserves all the powers to the States unless they are specifically delegated to the Congress. That is where the whole prohibition against unfunded Federal mandates came from. That is why, in 1995, this Congress passed as its first bill S. 1 of the new Republican Congress, to stop unfunded Federal mandates—Congress telling Governors and mayors and school boards what services to provide and how to spend their money.

As long as we are allowing States to make decisions about taxation on telephones and telegraphs and bus tickets and airline tickets and severance taxes, all of which are interstate commerce, I don't know why we worry so much about that.

There is the assertion that we might be taxing broadband. That is Internet service delivered by telephone and cable companies. We are really not taxing anything. We are trying to decide whether we should write some rules for what States should do. Broadband is a wonderful thing. It is always just around the bend. We want to it come. What we have said is that except for grandfathered States that now tax DSL Internet phone service, it can't be taxed in the next 2 years. We are just trying to level the playing field for 2 years, as we take the current law and extend it for that period of time.

Multiple taxation would be banned under our amendment, just as it is today. Discriminatory taxation is banned under our amendment, just as it is today. Taxes on e-mail and basic Internet access, banned, just as they are now.

So it seems to us our amendment is a good one. We are willing to continue to visit and talk with the Senator from Virginia and the Senator from Oregon, who have worked very hard and believe very strongly in this. But our arguments are, the Congress has promised not to pass any more unfunded mandates. We have made it a violation of the Budget Act to do so. We should respect that as much as we possibly can. No. 2, their proposal is potentially a huge unfunded Federal mandate which we have promised not to do.

We believe our amendment is better at reconciling two valid principles: One, continuing the ban on basic Internet access and, two, making an adjustment to create a more level playing field between cable and telephone while making a minimum offense to the principle of unfunded Federal mandates.

We also believe that a short term—a couple of years—allows us to craft wise decisions about what is happening in a rapidly changing technology, and theirs would impose an inordinately broad definition of what we mean by Internet access permanently or for an unreasonably long period of time.

There was a letter sent around from the Republican Policy Committee which asserted that the objective of the unfunded mandate law was to stop the Federal Government from imposing affirmative duties or regulations on the States. It basically argues that the Allen-Wyden amendment is not an unfunded mandate. All I can think is that that memo didn't make it all the way through the vetting process. It argues that the unfunded mandate law Congress passed in 1995 doesn't apply to situations where the Congress might say, for example, States may not collect taxes on telephones and telegraphs. If we were to say that, that would mean State and local governments would be deprived of $20 billion of their tax base next year, and they would have to raise taxes on food or medicine or income or property or something else, or cut services.

By the very plain terms of the Unfunded Mandates Act of 1995, it includes both affirmative actions. For example, when we pass a bill that says Memphis shall do thus and so for disabled children but we only pay for half of the cost, that is one kind of unfunded mandate.

But according to the Congressional Budget Office and the plain English in the 1995 law, it also includes the definition of direct cost of a mandate, ''the amounts State and local governments would be prohibited from raising in revenues to comply with the mandate.'' An unfunded Federal mandate also includes our telling the States you cannot raise revenues from these sources. If we think it is so important to do that, we are supposed to pay that.

I am afraid in this case the Allen-Wyden amendment, while they have worked hard to try to narrow it, still raises the possibility many billions of dollars would be lost to State and local tax bases. In other words, we would be imposing a multibillion dollar unfunded Federal mandate on State and local governments.

We believe there is a better way, that we can continue the ban on Internet access, but do it in a way that minimizes the unfunded Federal mandate. Because the leader asked us to, and we want to, we will be working over the weekend, and our staffs are meeting this afternoon. We will be working early next week, and we hope we can come to some agreement in a very short period of time.

I am grateful to Senator CARPER for his leadership in helping us come up with a sensible path in the future. I wanted to give that report on the status of where we are.

Mr. CARPER. Will the Senator yield?

Mr. ALEXANDER. Yes.

Mr. CARPER. Let me just say if I have provided leadership, I know the Senator from Tennessee has. I have enjoyed the opportunity to work closely with the Senator from Tennessee, Senator VOINOVICH, Senator GRAHAM of Florida, and others on this issue. I reflect on the role we as Senators are trying to play in this and the disadvantage some of us operate from. The Presiding Officer and I serve on the Banking Committee together. If the issue before us is like the Fair Credit Reporting Act, we have a fairly good idea, using our background and experience, as to what is fair and reasonable; what makes sense and what is good public policy. If the issue is energy policy, I think our background prepares us to make reasonably good judgments there.

When we come to issues with respect to the Internet and the transmission of information over the Internet, for a lot of our colleagues—certainly this one—it doesn't take long to get in over our heads. If we are honest, I think most will say that. In order to help us through a difficult issue like the one we have now, whether there should be a continuation of a moratorium on Internet taxes and in what form, and should it be extended, we have bright people who work on our staffs, and we speak to people from the outside, whether they happen to be from the industry or State and local governments, to round out our knowledge. But it is still a different result.

For this Senator—I suspect I speak for the other Senators here at this moment—what I think we can maybe best do is figure out the fair thing to do. I always like to talk about the Golden Rule, to treat others like I want to be treated. I try to apply that even in this instance. If you look back to the 1995 law Senator ALEXANDER talked about, the genesis of that law was Governors like he and I used to be, and even mayors in places like Gillette, WY, who didn't want the Federal Government to tell them what to do and not give them

the money to do it. Similarly, whether you are a Governor or mayor, we didn't much appreciate the Federal Government coming in and saying we are going to take away your ability to raise revenues as you see fit and not make up for the shortfall.

That sense of outrage sort of grew out of State and local officials, and eventually came here and compelled the Congress to take steps to enact the 1995 legislation, banning unfunded mandates both under spending and on the revenue side. Today you cannot do that. For the most part, Congress and the President since have done a good job adhering to that law.

What is before us now is how do we be true to the spirit of the unfunded mandates law, not taking away the revenue base of the States and, at the same time, trying to be fair to consumers. People want to have access to the Internet, whether residential consumers or businesses, and how do we manage to be fair to the businesses that are providing these services? I am not going to suggest any of that either. If I could, we would have finished before this week and we would all be in Wyoming, Tennessee, or Delaware, doing other things. But we are not there yet.

The hangup is, as the Senator suggested, the moratorium that has been in effect for the last 5 years says you cannot access the Internet and add a tax to somebody who has a monthly internet bill. It says if two States or more want to tax in that transaction, you cannot do that. Multiple taxes are something you cannot do. The same legislation has said if there is a discriminatory tax somebody wants to impose on Internet transactions, you cannot do it. For example, Delaware has no sales tax. To say for a person who goes to the local book store and buys a book in Delaware that you don't have a sales tax, but if you buy that same book over the Internet, you have a tax imposed, that is a discriminatory tax. The law in effect for 5 years said you cannot do that.

What Senator ALEXANDER, Senator VOINOVICH, Senator GRAHAM, Senator ENZI, and a number of others are seeking to do is to simply say the law in effect for the last 5 years, which prohibits those kinds of activities, stays in effect. Because the world is changing in the way people access the Internet, through broadband and DSL, which a couple of months ago I could not even spell, today turned out to be a key component of this debate. But how do we change the old 5-year moratorium in a way that is fair, for instance, to the baby bells, to their business interests? What can we do that is fair and will enable them to be competitive, level the competitive playing field for them. They have suggested that whether you are getting your Internet service from a cable provider or a telephone company, State and local governments should not be allowed to tax that access to the Internet, at least for the end user.

Here is where our divide is with our friends, Senator ALLEN of Virginia and Senator WYDEN from Oregon. The question is: Where do we prohibit the imposition of the tax? At what point? Starting with the consumer in his or her home, the business in its operation, all the way back up to the ISP, through the infrastructure to the backbone—where does access to the Internet begin? We argue in our definition in our proposal the access begins between the provider, ISP, and the consumer, whether a business or an individual.

Other colleagues, who have a different view, have a much broader vision of where the Internet access comes from—much more expansive, and by their expanded definition, they expand the prohibition dramatically on what State and local governments can tax to raise revenues. I think there is an honest disagreement here. We believe we should focus on what I call the last mile. There are others who believe we should focus on the first mile, all the way through the last mile. When we do that, we take for the States potentially a fair amount of revenue generation capability off of the table at a time when obviously they are hurting and they need every dime they can raise.

I don't know if we can resolve this difference. I think we had a good honest go of it today. Senator MCCAIN is trying very hard to broker some kind of agreement. We may be successful or we may not. Ultimately, we may have to just vote.

I say this to our friends who have a different view than Senator ALEXANDER, Senator VOINOVICH, the Presiding Officer, and myself: We in Delaware have learned over the years to make our State a real attractive place to do business. If other States want to impose fees or taxes on services, and we are smart enough in my State to not do that and then go to the businesses that are maybe being mistreated by regulatory or tax policies in another State, and say, Come to Delaware; you won't have to put up with any of that frankly, it has a good argument.

In a variety of ways, financial services and other sections of our economy are stronger today because we have chosen not to impose certain taxes or fees. We have gone to sections of the economy and said: Look what we have in our State.

I say to those who have a different view than Senator ALEXANDER, Senator ENZI, and myself: Don't discount the competitive nature of States and how some of us will elect not to impose a tax on any of this business in an effort to be far more attractive to those kinds of businesses as we go down the road.

I thank my colleague for the good work he is doing and say to him how much I have enjoyed working with him on this issue, clean air issues, and others. I hope this is a harbinger of things to come.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I ask unanimous consent to speak as in morning business for 5 minutes.

The PRESIDING OFFICER. The Senator is still under a unanimous consent agreement to yield as much time as the Senator wishes to the Senator from Delaware.

Mr. ALEXANDER. Mr. President, as I was listening to Senator CARPER, I was thinking about what he just said. I believe I am right about this, but Senator CARPER can correct me: What we are saying in our amendment is if the Senator from Delaware or I hook up a computer to the Internet, our amendment would prohibit State and local governments from taxing that event; isn't that right?

Mr. CARPER. I think the Senator has that right.

Mr. ALEXANDER. That would be true even if Internet access moved over from the current way many people do it—and this is hard for people to understand many times—over to the cable or the phone company; is that right as well?

Mr. CARPER. Five years ago when this legislation was written on the moratorium, I don't believe DSL existed. The idea of people accessing the Internet over broadband was not something people thought much of. The idea of accessing the Internet over wireless I don't think is something we thought we had the capability of doing. The world has changed.

Mr. ALEXANDER. So from the point of view of the Federal Government interfering with local governments, we would be making a pretty significant interference there because we would be affording to the Internet access connection a protection that we didn't afford the telephone, that we didn't afford the telegraph, that we didn't afford the purchase of food, the purchase of medicine—anything. If you hook up your Internet, nobody can tax you. That would be our proposal.

The other point the Senator from Delaware is making—Delaware in particular has done this—is, say, in the District of Columbia there was a big cable company or big phone company, and the District of Columbia said: We may not be able to tax the connection between Senator ALEXANDER's computer, but we can sure tax the cable company, we can sure tax the telephone company that provides that connection, and they raise the taxes to a very high level for certain of these points along the Internet architecture. I assume it is entirely possible the Governor of Delaware may ride the train down to the District and say: The tax may be 20 percent, but come live with us in Delaware; come to our State; we don't have a right-to-work law; other States do; we don't have an income tax; other States do. We may have a higher corporate tax than other States. States have these differences all the time, and if one State gets out of line, people leave, businesses leave, elections are held and people are

thrown out of office. That is the way we have operated the government for a long time.

This is a nation that from its beginning operated community by community and State by State and has had a great aversion to central direction of too many of these decisions.

Mr. CARPER. Mr. President, I say in response, that is the way States and competition—friendly competition—have worked over the years, and if it worked in the last century, it is going to work out that way in this century as well.

Mr. ALEXANDER. Mr. President, I ask unanimous consent to print in the RECORD two editorials from Tennessee newspapers: One from the Tennessean and one from the Chattanooga Times Free Press. They just came today.

The last sentence in the Chattanooga Times Free Press article says:

If the federal tax ban becomes permanent, state and local governments may have to come up with great amounts of tax money in other burdensome and permanent ways that taxpayers will not like.

The Tennessean says:

Sen. Lamar Alexander is not voting to raise taxes. He is not trying to increase the cost of Internet access, nor is he advocating a new tax on e-mail.

Instead, Alexander is trying to protect states from excessive control by the federal government. Yet the conservative states-rights position the senator has taken on Internet access has been turned on its ear by some of his critics. . . .

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

[From the Tennessean, Nov. 7, 2003]

ALEXANDER'S PRINCIPLED STAND FOR STATE CONTROL

Senator Lamar Alexander is not voting to raise taxes. He is not trying to increase the cost of Internet access, nor is he advocating a new tax on e-mail.

Instead, Alexander is trying to protect States from excessive control by the federal government. Yet the conservative, States-rights position the senator has taken on Internet access taxes has been turned on its ear by his critics, many of whom are Republicans.

Congress placed a moratorium on Internet access taxes in 1998. The few states, including Tennessee, that had taxed Internet access before the moratorium were allowed to keep their tax. The moratorium officially ended last week.

Now the House has passed legislation cosponsored by Representative Marsha Blackburn that would make the moratorium permanent and would eliminate all exemptions. In the Senate, Alexander opposes a permanent moratorium. He points out that Congress shouldn't micromanage the financial affairs of cities and States. And he points out that the few States that are exempt from the moratorium would lose between $80 million and $120 million in revenue if their exemptions end. That loss of revenue would force the States to increase taxes elsewhere.

Up until last week, Alexander was one of several senators who had placed a hold on the moratorium legislation, but he agreed to lift his hold on the bill last week in exchange for a Senate debate on the issue this week.

No one wants to pay more taxes. No doubt, Tennesseans, who are already paying tax on Internet access, would love to pay less for Internet connections.

But the question in the Senate isn't whether the Internet taxes should go up or down, or whether they should exist at all. The question is whether the Federal government should tell States what they can and cannot tax. Alexander says it should not, and he is right. Tennesseans who want to eliminate Internet access taxes should contact Governor Phil Bredesen and members of the General Assembly.

Tennesseans elected Lamar Alexander to the Senate because they believed he would exercise his own good judgment and act in the best interest of Tennessee. On this bill, he is.

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[From the Chattanooga Times Free Press, Nov. 7, 2003]

IT'S ABOUT TAXES—YOURS

It's not the kind of issue that generates lots of public attention or quick understanding. But when Senator Lamar Alexander, R-Tenn., took the Senate floor this week to discuss it, he wanted to make sure everyone understood that the proposed Internet Tax Nondiscrimination Act involves ''an unfunded Federal mandate''—which could result in State and local tax losses of $80 million to $120 million a year, that local taxpayers might have to make up.

Some time ago, to promote development of the Internet and other electronic communications, Congress banned taxes on Internet access until November 1, 2003, with some exceptions to expire October 1, 2006. The bill now before Congress would make those taxing bans permanent. Since most people don't like any kind of taxes, why shouldn't the ban be permanent?

Senator Alexander explained: ''We are not talking about the issue of whether to authorize States to require out-of-State companies, such as L.L. Bean, that sell by catalog or Internet, to collect the same Tennessee sales tax'' that local stores must collect. . . . ''That is an entirely different piece of legislation.'' (We believe such legislation should be passed to provide more State revenue and thus avoid the necessity of imposing other taxes on Tennesseans.) Senator Alexander continued: ''What we're talking about is whether Tennessee and other States can collect a sales tax from an Internet service provider when it connects my computer to the Internet, just as it collects a sales tax from the telephone company when it connects my telephone or from the cable TV company when it connects my cable.''

He said some senator seemed surprised when he suggested the proposed permanent ban on State and local taxation is ''an unfunded Federal mandate.'' But, Senator Alexander insisted, it ''is an unfunded mandate, plainly in violation of the Unfunded Mandates Reform Act of 1995 . . .''

Senator Alexander said the Tennessee Department of Revenue estimates that making the tax ban permanent would cost Tennessee many millions of dollars a year. With Tennessee finances already pinched, how would that amount be made up without new State taxes?

So, said Senator Alexander, ''I am filing tonight an amendment I call the Unfunded Federal Mandate Reimbursement Act. If a majority of the Senate should decide that banning State and local taxation of the Internet is important enough to create an unfunded Federal mandate—that is, claim the credit up here (in Washington), but make it be done down there (in Tennessee and other States)—then my amendment would provide a way for Congress to pay the bill for that by authorizing our Department of the Treasury to reimburse Tennessee and Minnesota and other State and local governments each year for the cost of this new mandate.''

Don't expect Congress to rush to embrace Senator Alexander's amendment. But he has made a point that deserves serious consideration.

If the Federal tax ban becomes permanent, State and local governments may have to come up with great amounts of tax money in other burdensome and permanent ways that taxpayers will not like.

Mr. ALEXANDER. Mr. President, I believe the more Senator CARPER, Senator VOINOVICH, Senator ENZI, Senator GRAHAM, and I talk about this issue, the more people are coming our way. I look forward to continuing to work with other Senators who have different views, and I hope we can come up with a good conclusion to this that respects both principles: banning taxation of Internet access and not imposing large unfunded Federal mandates on State and local governments.

I yield the floor, and 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. ROCKEFELLER. 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. ROCKEFELLER. Mr. President, I rise today to support the amendment to be offered by my friends and fellow former Governors, Senators GRAHAM, ALEXANDER, CARPER, and VOINOVICH.

The amendment is a very simple one. Every Senator who is aware of the fiscal crisis faced by States across the Nation, which I think at this point is virtually all States, ought to support this amendment, in my judgment.

The amendment simply says we ought to continue the current moratorium on Internet taxes for another 2 years, giving the industry additional time to reach out to new customers and ensuring that we do not undercut States' long-term ability to balance their budgets, because there is an enormous relationship between Internet taxes and State budgets. In fact, this amendment improves on the previous moratorium by ensuring that consumers' access to the Internet is tax-free. Regardless of the technology they prefer, be that DSL, cable modem, wireless phone, traditional dial-up access, they would all be treated the same under this amendment.

I know many of my colleagues are interested in providing a permanent moratorium on the taxation of Internet access, but I ask them to take a moment to consider the potential harm of the bill we are debating today.

Governors, State legislators, and mayors from across this country have called my office, and I would think the offices of most Senators, to implore us not to pass the legislation. I understand the moratorium envisioned in this other amendment applies only to taxes imposed on access to the Internet. However, our good intentions are

not enough to ensure that this legislation is properly applied and that the States are able to collect taxes on other telecommunications services.

Technology, as you well know, is still developing. In the near future, the providers of Internet services may offer telecommunications services as part of a premium package of technology products. Digital content presents additional challenges. I believe somebody purchasing a new movie should be taxed on that, whether they download the movie from the Internet provider or they purchase it from Amazon.com or they walk over to Blockbuster and buy it off the shelf. As technology develops and more and more options are available to consumers, Congress will obviously need to revisit this issue of what exactly falls within this moratorium since the technology changes so often.

This amendment would protect States' rights to impose fair and equitable taxes on products other than Internet access. As a former Governor, I remember very well the difficulty of financing critical State services. I was Governor some 20 years ago, but we were having those troubles then. They are much worse now.

I worked hard with the State legislature to achieve the right balance of taxes and spending. That was hard. I needed the maximum flexibility. It has been some time now, as I indicated, since I was Governor, but over the last few years we have witnessed again how States often struggle to balance their budgets and how, in fact, virtually every single State is going through that process.

It seems somewhat arrogant and unfair for us as Federal legislators to permanently limit the options available to States. I feel very strongly about that. I in no way want to disadvantage development of the Internet, but I want to respect the rights of other elected officials in West Virginia and in other States, and I believe in that strongly.

I believe a 2-year extension of the moratorium is the best of all solutions. It protects Internet access from State and local taxes for a while longer, as more Americans get access to the benefits of the Internet. It preserves for the future the flexibility that State and local governments need as they try to balance their budgets while providing for good education, improved infrastructure, adequate police and firefighting forces—all these things in this new age of terrorism. And it gives Congress the responsibility and the opportunity to revisit the issue, which is absolutely key, in 2 years, as the technology evolves.

Let me be clear. I strongly supported the previous moratorium on Internet access taxes because I recognized the value of expanding Internet use to more Americans. I believe Congress ought to do what it can to ensure the Internet becomes like the radio and the telephone and the television before it—technology that connects with all Americans and connects all Americans to each other.

In my home State of West Virginia, we are still working hard to ensure that all our citizens will have access to the latest broadband technology, so I am eager to support efforts that can make the Internet more affordable and more available, including extending the current moratorium for 2 years. However, I cannot ignore my concerns with the permanent moratorium we are asked to consider today.

I urge my colleagues to join me in supporting this amendment which a number of other former Governors and I have put forward.

I yield the floor. 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. 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.

POLITICIZING THE SENATE INTELLIGENCE COMMITTEE

Mr. FRIST. Mr. President, I want to spend the next several minutes commenting on a matter that I regard, as majority leader of this body, to be one that is very serious. As is the case with a number of my colleagues, in fact, most of the U.S. Senators, we have been given the opportunity to reflect on the publication of a very disturbing internal memorandum, a memorandum that lays out a blatant, partisan strategy to use the Senate Intelligence Committee to politically wound the President of the United States.

That is unacceptable. There is really no other way to read this memo. I am deeply disappointed that anyone—that anyone—would have a plan to so politicize the Intelligence Committee of the U.S. Senate, to render it incapable of meeting its responsibilities to this institution, to the U.S. Senate, and, indeed, to the American people.

Moreover—I had hesitated to come to the floor to address this directly, but now is the time to do that—the response by those behind this memo has been miserably inadequate, has been disappointing, and has been disturbing.

We are at a time of peril in our Nation's history. As our intelligence agencies and our Armed Forces in the Middle East are at war against our mortal enemies, those responsible for this memo appear to be—and anybody can read this memo. It is available now. The copy I have here is actually on the FOXNews Web site. But if you read it, those responsible for this memo appear to be more focused on winning the White House for their party than on winning the war against terror.

Those priorities are wrong. They are dead wrong.

As majority leader of the U.S. Senate, as one responsible for preserving the integrity of this institution and the direction of this institution, it is incumbent upon me to make sure we address this matter properly, appropriately, and adequately.

In the aftermath of the war in Iraq, the failure thus far to find deployed weapons of mass destruction is a legitimate matter for inquiry by this body, this institution, for our colleagues. After all, for nearly 10 years—throughout the 8-year tenure of President Clinton and the first 2 years of President Bush—the U.S. Congress and the White House were given a steady flow of information by the intelligence community that suggested such weapons did exist.

In fact, it was this information that precipitated, in 1998, the U.S. military attack Operation Desert Fox, ordered by President Clinton at that time, and, in part, Operation Iraqi Freedom, ordered by President Bush in 2003.

Thus, if there is incomplete or imprecise information that had been provided to President Clinton or President Bush and the U.S. Congress over a 10-year period, the intelligence community should be asked to explain. That is what the Intelligence Committee is expected to do; it is really charged by this body to do; and that is exactly—that is exactly—what Senator ROBERTS, chairman of the Intelligence Committee, set out to do.

Last spring, Senator ROBERTS, as chairman of the Intelligence Committee, made a commitment, jointly with Senator ROCKEFELLER, to conduct a thorough review of U.S. intelligence on the existence of and the threat posed by Iraq's weapons of mass destruction programs.

The review was also intended to cover Iraq's ties to terrorist groups, Saddam Hussein's threat to stability and security in the region, and his violations of human rights, including the demonstrated actual use of weapons of mass destruction; namely, chemical weapons against his own people.

The review was intended to examine the quantity of information, the quality of U.S. intelligence, the objectivity, the independence, the accuracy of the judgments reached by the intelligence community, whether or not those judgments were properly disseminated to policymakers in the executive branch, as well as to this body and the Congress, and whether any influence was brought to bear on anyone to shape the analysis to support policy objectives.

Thus, that was the initial charge and what, in fact, has occurred over the past 5 months. The Intelligence Committee staff has reviewed thousands of documents. It has interviewed over 100 individuals, including private citizens and analysts and senior officials with the Central Intelligence Agency, with the National Security Council, with the Defense Intelligence Agency, with the State Department's Bureau of Intelligence and Research, and even the United Nations.

It is indisputable the chairman of that Intelligence Committee, Senator ROBERTS, has complied in good faith with the nonpartisan—the nonpartisan—commitment which he made to his Democratic colleagues. Most recently, this nonpartisan commitment was manifest, once again, in a series of very direct, no-nonsense letters directed to the administration, demanding the immediate production of documents and interviews necessary to move the Iraq review forward.

Senator ROCKEFELLER, himself, formally recognized, on the floor of the Senate, the fundamental good work performed thus far when, on November 5, he stated on this floor, and I quote:

I have been vocal in my appreciation of the absolutely excellent job done to date by the staff on the aspects of the investigation they have been asked to perform, which is reviewing the prewar Iraqi intelligence. They have done a superb job, absolutely superb job.

The words of Senator ROCKEFELLER.

The chairman of the committee, Senator ROBERTS, has acted with the utmost attention to that nonpartisan tradition of this critically important Intelligence Committee. That nonpartisan tradition—and it is unusual to have nonpartisan traditions in this body—but it has always been preserved, for good reason, in that Intelligence Committee.

The tradition is reflected in the committee's founding resolution, S. Res. 400, enacted in 1976, as a result of nationwide concerns at that time about intelligence activities in earlier years.

The committee's nonpartisan tradition has been carefully cultivated and respected over time, over all these years, by its members. The tradition is part and parcel of the committee's rules, which extend the prerogatives of the minority, that are not found in any other committee in this body.

For a quarter century there has been a consensus in the Senate that the committee's nonpartisan tradition must be carefully safeguarded. Nothing less is acceptable. Why? Because this committee deals with information that is unique, that is privileged information, because of the dangerous and sensitive nature of the subject matter for which the Intelligence Committee, this committee, has unique oversight.

I come to the floor because that critical tradition has now been willfully attacked.

How can I say that? By this memo. You read the memo. The Senate Select Committee on Intelligence has been harmed by a blatant partisan attack. I have no earthly idea who wrote this memo. I do know why. I don't know who it was intended for, but I do know why. If you read the memo, you can look. It is a sequence of steps spelled out. The sequence of steps proposed in this partisan battle plan for the committee itself is without question intended to sow doubt, to abuse the fairness of the committee chairman, Senator PAT ROBERTS, to undermine the standing of the Commander in Chief at a time of war, and to launch a partisan investigation through next year to continue into the elections.

The memo lays clear that over the past several months there has been a partisan design at work ''to pull along the majority.'' According to the memo, the good will, the sense of fairness, the nonpartisan approach of the chairman of the committee, Senator ROBERTS, is still seen as providing ample ''opportunity to usefully collaborate'' in attacking the President of the United States. That is an abuse of the chairman of that very committee. This whole idea of leading that chairman or the committee along is simply unacceptable and out of the spirit of this committee. Again, it is something we simply cannot tolerate.

Finally, in the memo the author proposes that once the committee can be duped no longer, a partisan core of Senators can ''pull the trigger'' on another investigation.

The Senate Select Committee on Intelligence simply cannot function. Worse than that, it cannot fulfill its purpose for us without a complete understanding of what is at work in this matter. I thought it would come forward over the last 48 hours, but it simply has not. That is unacceptable.

Thus I suggest we take the following three steps. First, I don't know who wrote this memo, but as majority leader of the Senate, I do ask the author or authors to step forward, to identify himself or herself or, if there are several people, to stand up with that information for the full Senate. We would be much better equipped to understand the level of intent behind this partisan strategy as well as the depth of the problem within the committee itself.

It is necessary to know who the memo was intended to go to, who was to receive that memo. It was obviously written as a strategy. Who was that memo to be delivered to? Was it intended for political purposes beyond what is permitted in the Senate rules?

Second, it is reasonable to expect, I think—in fact, I know—that the author or authors and the designated recipient or recipients disavow once and for all this partisan attack in its entirety. It is hard to believe this disavowal has not come forward given what is at stake. The Senate cannot permit a committee chairman with the integrity of Senator PAT ROBERTS to be subjected to such abuse. The Senate as an institution should not permit a committee upon which all of us are so dependent—because of its privileged status with access to information, we are dependent on that committee to make decisions—to be so misused or potentially misused for partisan purposes.

Third, I expect there to be a personal apology to the chairman of the Intelligence Committee, Senator ROBERTS, for the manipulative tone and the injurious content of this document. Senator ROBERTS is one of this body's most distinguished Members. He is a friend. He is a trusted colleague. He served in this body for 7 years, rising to that position of trust as chairman of one of the Senate's most respected, most important, most critical committees, especially at this time of war. Senator ROBERTS, with his straight-talking manner, has the complete trust of colleagues on both sides of the aisle. He served this Nation in uniform, in the Marine Corps, in the House of Representatives. His integrity is unimpeachable. He is doing an outstanding job as chairman of the Intelligence Committee.

But only with the fulfillment of the three steps I outlined—No. 1, who wrote it and who was the intended recipient; No. 2, a total disavowal of the writing of this and, more importantly, the intent of this memo; and No. 3, an apology to the chairman—will it be possible for this important committee to resume its work in an effective manner, in a bipartisan manner, a manner that is deserving of the confidence of 100 Members in the Senate as well as the confidence of the executive branch.

In light of this partisan attack, Chairman ROBERTS and I have taken the opportunity to discuss the scope of the unfinished work on the review of the prewar intelligence in Iraq. It is our view that the committee's review is nearly complete. Together we have called upon the administration to provide the remaining requested materials. We have jointly determined that the committee can and will complete its review this year.

To the authors of this memo, there will be no more pulling along and no more useful collaboration on partisan schemes, borrowing from the malicious intent of this memo.

This must be addressed forthrightly. I call upon my colleagues to pay attention to this memo. It is something we can resolve and we must resolve over the coming days.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I commend our distinguished leader for addressing this matter which is of extraordinary importance to the institution and indeed the United States.

I humbly say I have been privileged to serve in this body for 25 years. I have been a member of the Intelligence Committee in years past, 8 years; the last 2 of those years serving as the ranking member with Senator DeConcini, who is now retired from the Senate. I speak now as a former member of the committee and draw on those 25 years of my own experience.

I have never seen an incident of the level of seriousness to our very vital security interests in this country as this particular memo presents. I think our leader, in a very fair and balanced way, has addressed the challenges. I commend the distinguished chairman, Senator ROBERTS, with whom I have served these many years in the Congress and the Senate.

I conclude by saying, speaking for myself and I think many Senators,

with everything we do in this body today, I keep in mind the young men and women of the Armed Forces, wherever they are in the world today, serving valiantly, most particularly in Afghanistan and Iraq, and how the actions we as an institution take hopefully are in their best interest.

I thank the Chair and the distinguished leader.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I thank our leader for bringing this matter to the floor. I join with the very distinguished chairman of the Armed Services Committee because that is what we really ought to be about. We ought to be focused on winning the war against terrorism, not allowing one of our primary, sensitive committees, the Intelligence Committee, to be focused on winning the White House. I can't say it any better than the Senator from Virginia. We have heroic young men and woman in harm's way fighting to bring order to a region of the world where we have had many threats to our security. The least these brave men and women could expect would be that our country and our Congress would be behind them.

Frankly, one of the reasons I sought membership on the Senate Intelligence Committee as a new member was I realized that in this critical battle against terrorism worldwide, we cannot win unless we have the best possible intelligence.

As I understand it, the job of the Intelligence Committee is not only one of oversight but of taking a look and seeing what has happened in the intelligence-gathering analysis and sharing in the past, how we can do a better job. Our staffs have been deeply engaged in this exercise for many months. We have followed it. We have had numerous hearings. We have read some, but not all, of the tens of thousands, perhaps hundreds of thousands, of pages that have come before us. We need, on a bipartisan basis, to be able to find out how we can improve that intelligence.

One of the reasons the Intelligence Committee is so special is the tradition it has. The intelligence community members, whose lives are at risk because of what they are doing—often undercover work, dealing with classified, sensitive subjects—have been able to come before the committee in the past, knowing they could count on confidentiality, professionalism, and on a body that was not going to be using their words or their actions for partisan political gain.

Unfortunately, when we first saw this memo, it looked as if there was somebody, or ''somebodies,'' in the Intelligence Committee who wanted to use it to win the White House. That is just unacceptable. Some people on the other side have said this is just an options memo tossed up for review. I have been around here for a few years, and a staff person on his or her own doesn't write a memo saying: We have carefully reviewed our options under the rules and we believe we have identified the best approach. Our plan is as follows.

I say that the occupant of the chair, and probably everybody else here, would be totally stupefied if they got a memo from the staff that was supposed to be an option memo and said: This is our plan. This is not an accident. Days have passed and there have been no consequences. If somebody was really off base, there would have been something that would have happened. Some steps would have been taken. As the distinguished majority leader has pointed out, nothing has happened. Unfortunately, too many of the actions we have seen seem to fit right in with this plan. Not only are they not disavowing it, they appear to be preparing to implement it, or are in the process of implementing it.

What is this plan? Is it to find out how the intelligence gathering could be better? Not likely. In addition to the President's State of the Union speech, they say, they want to look at the activities of the Office of the Secretary of Defense, as well as Secretary Bolton's office at the State Department. They want to go after political figures.

Somebody in my office said, ''This looks like a political witch hunt.'' I said maybe that is not a bad way to characterize it.

They are going after political scalps, not trying to find out whether the intelligence that we received, the White House received, the Department of Defense received, and the State Department received was good, but how they can use the process of the Intelligence Committee to win political points.

By the way, when they talk about ''when we can pull the trigger''—pull the trigger on an investigation—they say the best time to do so will probably be next year.

If I remember correctly, that happens to be a general election year. That would seem to square with some of the statements made by the many Democratic Presidential candidates who want to raise questions, who want to attack the President, using the process of the Intelligence Committee.

One of the things that is really bothersome is that they are not just speaking to an audience in the Senate. When they launch these attacks, these attacks get carried across the Nation and across the world. They get back to the people we are trying to fight. Do you know something? There is nothing a terrorist likes better than seeing discord, disharmony, and political infighting among the people they are trying to terrorize. That is one of the victories of terrorists. If they can tie up the intelligence-gathering operation, which is so critical for the protection, first and foremost, of our soldiers on the front line, but ultimately our allies and ourselves—if they can see that tied up in a political Gordian knot, then they know they are winning.

I strongly support what the majority leader has said. I strongly believe that our fine chairman has not only gone the extra mile, he has gone the extra mile and a half.

Some on the other side said we have not been able to get the information we want. When we have found we could not get information, the chairman has demanded it and we are going to get it. When they want to ask questions, they can do so. When they want to call witnesses, they can call witnesses.

There has been a suggestion that there was pressure on intelligence community members. The chairman has gone out and asked publicly of the intelligence community, if anybody has any information or concerns that they have been pressured, to come forward and talk to staff. We have set up elaborate procedures so they can come forward. We are still waiting. If we find any of that, we will certainly let it out.

In the meantime, it is time for us to get back to the job of the Intelligence Committee—how we can support, rather than tear apart, our intelligence-gathering system. It is with great regret we note that we have gone down this path and there doesn't seem to be any remorse or disavowal from the other side.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I rise today, first of all, to ask that I be associated with the remarks of the majority leader, as well as the Senator from Virginia and my colleague from Missouri, and to also pay a great compliment to the chairman of the Intelligence Committee, Chairman ROBERTS, who throughout the past 10 months has led the Senate Intelligence Committee through one of the most difficult, if not the most difficult, times in the history of the United States of America from an intelligence community standpoint.

Today, our men and women are fighting a war that is unlike any war America has ever been involved in before. The intelligence community is playing a more high profile and much more public role than ever before in the history of our great country. Chairman ROBERTS has been at the tip of the spear when it has come to providing oversight in a bipartisan manner with respect to the activities of our intelligence community.

Over the past week, he has provided great leadership with respect to the most sensitive issue that has taken place in the short time I have been a Member of the Senate. We have seen a security breach unlike any other security breach I have ever experienced.

As my colleagues have noted, the memo that has been referred to that was prepared by someone on the other side of the aisle—we have yet to find out who—was a blatant political attempt to impede what I consider to be an independent, nonpartisan review of prewar Iraq intelligence. America

should expect more from this Congress. The Democrats in this body should expect more from themselves as well as their staffs.

The Select Committee on Intelligence was established to be nonpartisan in nature, in which Congress could perform critical oversight of the intelligence activities of the United States. This nonpartisan environment was, and is, a crucial feature. This nonpartisan environment creates a crucial level of trust between the executive branch and the Senate, permitting the President to share sensitive national security information, with the confidence that the committee will protect the information and not use it to engage in rank political misconduct.

We have seen just the opposite take place with this blatant political attack that comes from the other side in the form of this memo.

We can have our differences over issues involving Iraq, and we have had those differences, and we will continue to debate issues such as weapons of mass destruction. But no one in this body and no one in the intelligence community ever expected a weapon of mass destruction to be dropped on the Senate Intelligence Committee, as was done this week.

I implore the leadership on the other side of the aisle to follow the initiative of the majority leader: examine what he has said with respect to what needs to be done from this point forward. I certainly hope the leadership on the other side of the aisle will do just what they are charged to do, and that is to provide leadership and come forward to explain the purpose of this memorandum, its intended use, and where they expect us to go from here because otherwise, that weapon of mass destruction that has been dropped on the Senate Intelligence Committee is going to impede our ability to function in the bipartisan way that is absolutely crucial if we are going to exercise our oversight role in the intelligence community.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, I rise to reinforce the very serious concerns just raised by the distinguished leader and my colleagues, and I thank them for that. The Senator from Tennessee is an ex officio member of the Intelligence Committee. He has also been a member of the Foreign Relations Committee. He thoroughly understands the complex and important foreign policy issues which depend on reliable intelligence for their proper resolution.

I associate myself completely with his comments and agree with him that neither the Intelligence Committee nor the Senate, let alone the American people, are well served in the current atmosphere of raw partisanship that was created by a minority attack strategy that was revealed this week.

I have come before the Senate many times to report on the progress and good work that has been done by the committee staff in a bipartisan way on the Iraq intelligence review. That has been under review since the spring of this year. Two days ago, I expressed an interest in getting back to work in the Intelligence Committee. Some Senators across the aisle have taken this sentiment as an expression of readiness to simply close the book on this episode and pretend like it never happened. They are mistaken.

What has occurred in the Intelligence Committee was not a simple misunderstanding over policy or a mild disagreement about philosophy or oversight responsibilities. Far from it. What occurred was a direct assault on the heart of what makes the Intelligence Committee a unique and credible and respected entity in behalf of our national security. It was a direct assault on our concept of oversight that is the product of some of our country's most trying days. It has functioned well, although imperfectly, for nearly 30 years. And now we find ourselves at a crossroads, and, boy, is this a road we didn't have to take.

Unless and until this reprehensible attack plan and strategy to derail the committee's important work is properly addressed, I am afraid it will be impossible to return to business as usual in the committee.

I remain absolutely stunned that just one Member of the minority of the Senate has disavowed this destructive strategy and said we are on the wrong trail, said it would lead to a box canyon. That courageous Member saw it for what it is: ''A highly partisan and perhaps treasonous memo.'' Those are his words, Mr. President.

What really disturbs me the most is that most Democratic Members just haven't remained silent about this outrage; some of them have openly embraced it. They have actually tried to make a silk purse out of this sow's ear by dressing up their planned attack on the Intelligence Committee as some kind of frustrated cry for help from their committee staff. That is not going to wash.

Democratic reaction to the attack memorandum is as destructive as the strategy itself. We face mounting intelligence challenges in places such as North Korea, Iran, and, of course, Iraq, and Afghanistan. Members across the aisle should carefully reflect and decide whether their caucus should repudiate or disavow—pick any word you want—this plan and embrace our Nation's security instead of self-interest. Critically important work lies ahead for the Senate Intelligence Committee, and an atmosphere of mutual trust and professionalism must be restored.

According to Senator Bob Kerrey, a former Senator and a former vice chairman of the committee said:

> Rank partisanship like this destroys the comity needed for compromise.

There is a way to restore that comity quickly and completely. It seems to me that Democratic Senators must clearly repudiate or disavow the blatantly partisan strategy laid out in the attack memo. If they refuse, it seems to me, then, that the Democratic caucus must be prepared to accept responsibility for destroying the Intelligence Committee's 25-year, almost 30-year tradition of effective nonpartisanship when the country needed it most.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I first compliment the distinguished chairman of the Senate Select Committee on Intelligence, the Senator from Kansas, not only for the remarks he just made, but for the way he led this committee during very difficult times, as has been mentioned before.

I regret he has been criticized for the very acts of comity which are required of a chairman in a position such as this for trying his best to accommodate the members of the minority, trying his best to be as open and as broad as he could possibly be in approaching the issues that have been brought to his attention by members of the minority, even criticized, I have seen, in his own hometown press, his own press in Kansas for being too soft in dealing with the members of the Democratic Party in this matter.

It is his job to bend over backwards, to make the Intelligence Committee work in a nonpartisan fashion. I didn't say ''bipartisan,'' I said ''nonpartisan'' because that is the way this committee was set up 25 years ago: to be a place where politics could not intrude.

I don't know how many people are aware of where the Intelligence Committee works. It works in an area that is secure. That is the phrase. There are special physical arrangements in the construction of this area in which the committee works. It is literally a vault that you walk into, totally closed off from the rest of the world, obviously because we don't want any electronic surveillance or other means of intercepting what is said within the confines of this secure area.

It could also be a metaphor for its location in this very political city because there is a lot of politics in Washington, DC. We all understand that.

This is a special place where politics is not to intrude. It is literally an island in this political sea that is supposed to be out of bounds for politics.

The chairman has done a great job of trying his best to get all of the information he can from the intelligence community, from the administration, from any other source that would be useful to the committee's work, and to bend over backwards, as the memorandum itself notes, for the members of the minority. I take my hat off to him for that and suggest that he should not be criticized for it; he should be praised for it.

He, too, has made the point that there is a point beyond which one just cannot go. When it appears that the

other side has attempted to take advantage of your goodwill, as the chairman has done, he has got to say that is it; no more; this committee is not going to be used for partisan political purposes. That is what he should do, and I applaud him for that effort.

I also appreciate the comments of the distinguished majority leader in bringing this to the full body as he has done, to raise the critical questions and to simply ask for those responsible to step forward and acknowledge their responsibility and identify for whom this memorandum was written; for the responsible people, including the leadership of the Democratic minority, and certainly the leadership of the committee, to disavow the contents of the memo, the plan that has been written, and to make a public apology to the distinguished chairman of the committee.

I think those are very reasonable requests and, frankly, too many hours have passed since the first calls for disavowal. Yet the memorandum remains not disavowed.

I would like to take just a moment to try and explain why some of us feel so strongly about this. I served on this committee for 8 years. There is a rule that a Senator can only serve for 8 years because we never want this to become a politicized committee. We never want it to be a source where power is gathered around people who maintain their position. This is supposed to be a place where a Senator comes in, gets expertise, serves time, and then moves on. I had the honor and privilege of serving for 8 years.

One of the things that always stuck with me was the fact that it was not bipartisan, it was nonpartisan. The staff was selected primarily from the intelligence community, people who were experts in matters of intelligence. When I first came in, I said I had a member of my staff who used to be with the Intelligence Committee. He has the top clearances, and I would like to have him on staff to help me on this committee. Bob Kerrey, the former Senator from Nebraska and distinguished former chairman referred to by Senator ROBERTS, made the point at the time: No, we cannot do that because we do not want there to be any suggestion that there is influence in the committee from the private staff of individual Senators. This is professional intelligence community staff, and if it ever were thought to be otherwise, we would never get the cooperation of the intelligence community providing us with secrets that are the most significant, important secrets of our Nation.

Our committee staff of the Select Committee on Intelligence has the complete knowledge of the most significant, serious secrets of this country. They have to be above reproach. Think for a moment what would happen if it were perceived that they were political staff just like all the other committees. There is nothing wrong with political staff, but we all understand they have a substantive and a political dimension to the work that they do. We all operate within that understanding. But here, think about what a Senator could do knowing all of these secrets if they decided to use them for partisan political advantage.

I can state unequivocally that I could have gone out and criticized the Clinton administration with things I knew, and people on the committee today could probably go out and criticize the current administration for things that they know. It would be very hard to respond to that because the only response is to use similarly classified information to respond.

We cannot get into that game. No one would share information with the intelligence committee if they felt that it could be used for political purposes. Indeed, what foreign country or other sources would be willing to provide information to our intelligence community with the understanding that it might go right to a partisan political committee of the Congress? It could not be done.

I was interested to go to Great Britain and visit with Parliamentarians who only recently obtained oversight, like the Intelligence Committee oversight of the United States, over intelligence activities of the executive branch of their government. Now, understand they are a parliamentary form of government so the distinction is not nearly as bright as it is in the United States, but they sought advice from us as to how they could best do oversight of this important intelligence function.

They were interested in how we were able to get these deep dark secrets of our country into the legislative branch of government when in the past they had always been the sole province of the intelligence community and the executive branch. One of the explanations was because we were trusted. We were not a partisan committee like the other committees.

Well, this memorandum and the conduct of the staff in this particular case begins the process of destroying that credibility and that trust and thus eliminating any prospect that this committee can operate in a successful way in its oversight function. That is why this is such a big deal.

I mentioned former Senator Kerrey. I would also mention former chairmen of the committee, Senators SPECTER and SHELBY, both of whom spoke to this issue a couple of days ago and recounted how in their experience they had never seen anything like this during their time as chairman and noted that they could not possibly function as a committee if there were a perception that the committee was being used for political purposes.

I might note one other thing just as an aside. I wrote additional views, along with the distinguished chairman of the committee, today to the report that the Intelligence Committee issued at the end of last year about the events leading up to September 11, 2001. One of the reasons that those other views are not as eloquent as I would have liked them to have been is that we had to draft them very quickly, after the report was done, after we knew what its conclusions were. We were able to read through it, and the Senator from Kansas and I noted that we did not totally agree with everything—more precisely, there were other things that we thought should have been said in that report, and we hastily put together our additional views and got them attached to the report. I hope they are helpful for people who read that report and our additional views.

We did not come to a conclusion before that report was done, before the committee's work was done, that no matter what that report said, we were going to attach additional views and be critical of the report. We could not have done that because we did not know what it was going to say.

That is what this memorandum suggests is the plan of these Democrat staffers, that irrespective of what the report says the Senator from Kansas will oversee the issuance of in the next few weeks, they plan to attach additional views castigating the majority. I will quote that in just a second. That is a misuse of the process and that is the kind of thing that we are talking about.

I would just finally note in this regard, the report that the committee is working on now is the second of three major reports. First, the committee put out the report at the end of last year. Then there is the followup report that is being done right now on the intelligence leading up to September 11 and leading up to the conflict in Iraq, and finally the Kean commission, which is also going to be issuing a report on the same subject. So all three investigations overlap in one way or another to ask the question about the adequacy of our intelligence pre-September 11 and pre-Iraqi war. It is not as if this subject has not gotten a lot of attention.

The public might be a little confused about what this memorandum actually says. I just wanted to note finally what this memorandum says. It begins by saying:

> We have carefully reviewed our options under the rules and believe we have identified the best approach. Our plan is as follows.

So this is not a recitation of options. This is a statement that they reviewed the options and this is what they came up with: The plan, ''our plan is as follows.'' It clearly is written for someone who understands fully what the idea was.

Our options for what? It would have to be options for something that the recipient of the memo already understood. It says:

> First, pull the majority along as far as we can.

That is the distinguished chairman of the committee.

Pull the majority along as far as we can on issues that may lead to major new disclosures regarding improper or questionable conduct by administration officials.

In other words, a fishing expedition. Let us see how long we can string this out and maybe we will get lucky and come up with something. In fact, they say it right here: ''. . . We don't know what we will find,'' and then there is a parenthesis at the end of this paragraph that I find very interesting. ''Note: we can verbally mention some of the intriguing leads we are pursuing.''

No, you cannot, not under the committee rules. It is absolutely forbidden.

What is in that committee is confidential. You cannot verbally mention some of the intriguing leads that ''we are pursuing.''

Second:

Assiduously prepare Democratic ''additional views . . .''

That would be appropriate if the report is already done, but what does it say?

. . . to attach to any interim or final reports the committee may release.

In other words, it doesn't matter what the committee says. We'll write these views ahead of time and attach them.

. . . we intend to take full advantage of it,

it said.

Our additional views will also, among other things, castigate the majority for seeking to limit the scope of the inquiry.

The majority has not done anything yet but, by golly they are going to be castigated for this.

Third:

Prepare to launch an independent investigation when it becomes clear we have exhausted the opportunity to usefully collaborate with the majority.

I like that phrase. I think that reveals a malevolent intent here. Then:

. . . we can pull the trigger on an independent investigation. . . . The best time to do so will probably be next year. . . .

They then talk about the advantages or disadvantages of doing it at that time. They note that:

We could [under the second view here] attract more coverage and have greater credibility in that context than one in which we simply launch an independent investigation based on principled but vague notions regarding the ''use'' of intelligence.

It concludes:

. . . we have an important role to play in revealing the misleading—if not flagrantly dishonest methods and motives—of the senior administration officials who made the case for a unilateral, preemptive war. The approach outlined above seems to offer the best prospect for exposing the administration's dubious motives and methods.

This is political. This is staffers who have already prejudged. They cannot believe President Bush. There must be bad, dishonest motives. It is their mantra, and I think they think it is their duty to expose and blame the Bush administration. Yes, it is political, but in their view it is a higher calling. Bush must be exposed, so any method is acceptable, so the end justifies the means even if it risks destroying the intelligence committee.

These staffers should know better because they are senior staffers, presumably. That is the kind of people who get hired on this committee. But it is wrong to put partisan politics above national security and certainly the members of the committee know better. That is why the majority leader is absolutely correct in calling upon them to disavow this memorandum, which puts partisan politics ahead of national security.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, let me initially state I have the highest respect for PAT ROBERTS, with whom I served for a number of years on the Ethics Committee. I served with him in the House of Representatives. I also have the highest respect and the deepest admiration for JAY ROCKEFELLER, a man who has devoted his life to government and who, as I have indicated, I admire greatly.

But the American people must understand this memo that has been talked about was somehow stolen from the offices of Senator ROCKEFELLER and his people who work in the Intelligence Committee. It was purloined—I used the word stolen—and then made public by the majority. I think one of the things we should consider here, in addition to what is in the memo, is how this information was taken. How it was obtained and how that came to be is something the Intelligence Committee should really be concerned about because, as a number of Senators have spoken about this afternoon, the information that is spoken of in the Intelligence Committee, the memos, letters, and other information that is in the Intelligence Committee, has to remain secret. It has to be something that is within the confines of that office.

That wasn't done in this instance. All you need to do is compare the situation where, just a few weeks ago now, information was leaked from somewhere within the confines of the White House to Robert Novak, a distinguished columnist in the Washington area, and that information was obviously leaked in an effort to get even with Ambassador Wilson. How did they intend to get even with Ambassador Wilson for questioning how the war came to be in Iraq? How were they going to get even with him? They were going to disclose the name of his wife who was a CIA agent. By her name being made public, not only could it lead to her physical harm but harm to the people with whom she had intelligence contacts all over the world. Where is the hue and cry about this?

I have been terribly disappointed over the last several days about what is happening in the Senate. There were speeches this afternoon accusing Senators who are not here to defend themselves and who are only trying to do what they think is right for national security—it may not be right, but they think it is—of being unpatriotic. That makes me feel even sadder.

The American people should understand, what we have here is an investigation being conducted by the Intelligence Committee. It is a very important committee. I acknowledge everything that has been said by the Senators here this afternoon. It is very important. But the minority believes the investigation should be more than looking at what the civil servants did; that is, the CIA itself, and should be looking at not only what the civil servants did but what the policymakers did.

I voted for the first gulf war. I voted for the second gulf war. I have no regrets about having done either. But I am very interested in how we got to the situation we are in.

I said we can win the war, but can we win the peace? I want to know about how the policymakers made the statements they did.

I think it is also of note, as my friend, the distinguished Senator from Arizona, indicated, he did file the same views—he and Chairman ROBERTS. In this report, on page 4 in their views I quote:

Because the fundamental problems that led to 9/11 are almost certainly rooted in poor policy and inadequate leadership, the investigation should have delved more deeply into conflicting interpretations of legal authorities, including presidential directives, budget allocations, institutional attitudes, and other key areas. Only penetrating these areas will tell us how policymakers, including Congress, contributed to the failures the Report identifies.

So as I understand this memo, which was stolen from the Intelligence Committee—I don't see anything wrong with their asking for more information and how we should start looking at the policymakers, not just the bureaucrats.

On page 17 of the report, Senators ROBERTS and KYL said:

The failures that led to 9/11 occurred not only in the intelligence community. The [Joint Inquiry] was selective about what threads of inquiry it was willing to follow beyond the intelligence community.

So they were asking for what I understand the memo asked for.

Rather than talking about the Intelligence Committee being landlocked, blocked, I think they should just go ahead and do their report, enlarge it, and include this information.

Last night on this floor and earlier today I tried to get permission from the majority to pass military construction. The conference report should have been passed. We are not doing that. We could do it right now. I also tried to pass the Syria Accountability Act. I understand procedurally why on the Syria Accountability Act the majority may want to hold it over. An hour and a half is plenty of time, but the appropriations bill has no time on it. I can't understand why we will not do that.

Talk about political grandstanding, we now learn that starting next

Wednesday at 6 o'clock we will spend 30 hours talking about judges.

I ask unanimous consent that the debate time for discussion on judges, which we have all learned is going to be 60 hours, be divided and controlled equally between the two leaders or their designees.

The PRESIDING OFFICER. Is there objection?

Mr. FRIST. Reserving the right to object, Mr. President, it is interesting to me; comments have been made over the course of the day that there was some attempt to figure out how time would be divided, and I believe the allegation has been made that had been discussed with me before. We have not gotten to that point yet. So I am a little bit surprised about some of the statements which were made earlier.

As we discussed the judicial issue and the filibusters that are ongoing, which are unprecedented—partisan filibusters in this country on the judicial nominees—I do think it is critically important that we have the opportunity on both sides to be heard. The plans will be, after we finish the appropriations process over the next several days, that at that point in time we will turn to the judicial nominees. We will be debating two nominees who haven't yet been considered on the floor of the Senate. The intention has been made very clear that the Members on the other side of the aisle will filibuster. Therefore, I look forward to an active debate between both sides of the aisle. We would be happy to talk to the Democratic leadership about how the time will be divided.

Mr. REID. Mr. President, I withdraw the unanimous consent request and express my appreciation for hearing that at a later time the leader will determine how he feels the time should be allotted. I am glad he is thinking about some allocation of time to the minority.

I also say that my friend from Arizona raised questions and made statements about the 9/11 Commission of which Governor Kean is chairman. Of course, that has a number of people on it, such as Senator MAX CLELAND. But as we have read from the press accounts, even Governor Kean, a Republican, is concerned about the lack of information.

From the 9/11 Commission, Governor Kean has indicated publicly that he may go to as far as issuing subpoenas to the White House to get the information he hasn't gotten yet.

If we are talking about divulging information, one of the things that we need to talk about is what has gone on in preparing this intelligence report between the White House and the Intelligence Committee which is supposed to be sacrosanct in itself.

Numerous questions have been raised about what the intelligence community told the Bush administration about the threat posed by Saddam Hussein and how administration officials used this information in the days leading up to the war with Iraq.

What was the factual basis for the administration's assertion that Iraq attempted to acquire uranium in Niger?

What was the factual basis for the administration's assertion that there were concrete ties between Saddam Hussein and al-Qaida?

What was the factual basis for the administration's assertion that Iraq posed an imminent danger to the United States?

What was the factual basis for the administration's assertion that if we did not act in Iraq, the so-called smoking gun would be a mushroom cloud?

In all the speeches, not one of my colleagues has suggested that these are not legitimate questions for congressional inquiry. That is because each of us recognizes that we need a strong, independent intelligence community to win the war on terrorism.

In order to answer these questions, we need to understand both what intelligence told the administration about these issues and how the administration used that information.

Both issues have important implications for national security, and both issues should be thoroughly examined by Congress.

Nevertheless, the Intelligence Committee chairman rejected the Armed Services Committee chairman's proposal to conduct a joint investigation.

My friend, the senior Senator from Virginia, asked for a joint inquiry by the Armed Services Committee and Intelligence. But that didn't come to be, even though we all know it was a good idea.

At the same time that he was rejecting these entreaties from members of both parties, press reports indicate that the majority was meeting with the White House, as I have already indicated, to discuss how to proceed on matters that affect the intelligence community.

I don't think it should come as a surprise to anyone who knows these issues that some in this body who are concerned about our national security have seen their pleas ignored by the majority. They have been frustrated.

It is difficult for Members in this position to understand why the majority would refuse to explore the questions that I have outlined only briefly—questions which we all agree need to be answered if we are to succeed in this war on terrorism. We all agree that these are important questions. We all agree the committee has authority to look into these issues.

While we are posing questions for each other here, my question is this: Why isn't the Intelligence Committee looking at both what the intelligence community knew and how the administration used that information?

Again, the memo that is the subject matter of the discussion here today was not leaked by anyone we know. In fact, we believe—and I think there is credible evidence to indicate—that it was stolen, purloined, and then made public. It wouldn't have been made public but for the majority.

Doesn't the minority have a right, in the secret confines of the Intelligence Committee room, to have pieces of paper there that aren't going to be pilfered by the majority? The staff allocation is very unfair. Some say it is about 30 to 3. But in spite of that, those 30 should have better things to do than to pilfer through the records of the minority.

I have the greatest confidence in Senator ROBERTS and Senator ROCKEFELLER. I think we should get back to the business of this Intelligence Committee. We should get back to it, and I hope they will broaden the investigation. If they decide not to broaden the investigation, as the memo indicated—and I have only read little bits and pieces of it; I haven't studied the memo—then there are things the minority can do to bring this out because the issues that I have raised should be made public.

I hope these two fine Senators—the Senator from Kansas and the Senator from West Virginia—will work together as they have so well and not let this stolen memo hurt the deliberations of this most important committee, the Intelligence Committee.

I apologize to the majority leader. I know he is a busy man. I am sorry I took so long to respond to the remarks made by others here today.

Mr. FRIST. Mr. President, we are about to wrap up here in just a couple of minutes.

But just from my standpoint, based on the comments that have been made, we still have no one disavowing the contents of the memo or the intent of the memo. All I ask at this juncture is, Who wrote it? Who was it intended for? Who was the recipient?

Second, I ask for someone to stand up and disavow either the intent or the content of the memo.

Third, an apology to the chairman, who it certainly seems to me there is an intent to in some ways embarrass and subtract from the integrity he has brought to that committee.

Those three things.

Just to respond very briefly about some other business, we share the minority whip's concern about getting our business done. I have mentioned that November 21 is the target date for us to adjourn.

I am pleased that we have been able—speaking to the legislation that we mentioned—to lock in a time agreement on Syria accountability. It was a priority of mine. It is a priority on my side of the aisle, and on the other side of the aisle. And I can assure our colleagues that it will be done early next week. I am not sure exactly what that date would be but sometime early next week. There are Members on both sides of the aisle who desire to speak on the Syria Accountability Act. I urge them to be available early next week, Monday or Tuesday, or they might not get that opportunity. I understand both sides of the aisle want to progress quickly to this important piece of legislation, the Syria Accountability Act.

On MILCON, I am prepared to move on that conference report. If the minority whip is willing, I am prepared to lock in a 20-minute time agreement to allow the managers to make short statements and then to allow us to finish that measure. I ask the Democratic whip if he would allow us to proceed to that when we proceed to the conference report, that it be considered, and that a short time agreement be part of that agreement.

Mr. REID. Reserving the right to object, I ask that the consent be modified to allow the statements to be made after the bill passes today. We would pass it today, and people could have more than 20 minutes next week to speak on it all they want. This matter should be passed immediately.

Mr. FRIST. Mr. President, as I said earlier, I renew my request as made because it is very important that people who have worked very hard on MILCON, out of respect for them and those managers, be here and they make the appropriate speeches and response in support of this bill.

Mr. REID. Reserving the right to object, does the leader have the time in mind when he would bring this up?

Mr. FRIST. Mr. President, we would bring it up the early part of next week.

Mr. REID. As I have indicated, I want it passed tonight. People in Nellis Air Force Base and Fallon can do without speeches. It should be passed now. If it will not be passed now, I object.

The PRESIDING OFFICER. The objection is heard.

Mr. FRIST. Mr. President, as you can tell, we have a very busy week next week. I will comment a little bit more on the schedule shortly and we will be doing MILCON and Syria as well as many other things over the next several days.

PARTIAL-BIRTH ABORTION

Mr. LAUTENBERG. Mr. President, I rise to discuss something that struck me as downright chilling when I saw it yesterday in the paper. It was the signing of the so-called partial-birth abortion bill. I want to show a picture as it appeared—as I first saw it in the Washington Post. I challenge anybody: Find a woman in that picture. We even broadened it to a larger picture, and once again I issue the challenge: Find a woman in this picture. There are 10 men, not 1 woman in that picture.

This picture represents the most sweeping attack on women's rights in 30 years. What do we see? We see a group of gleeful men, smiles across their faces. We don't see the picture of the women who are frightened to death about what can happen if they need to make a decision to protect their health, in the company of their doctor.

This gleeful group is watching President Bush sign away women's rights. Look at the image—not a woman on the stage. Does anybody doubt about how the population splits 50–50 between the two genders? But here, in these two pictures, it is all men, and it is downright frightening.

It has been said that a picture is worth a thousand words. When women across America picked up the paper or watched the news and saw this image, it spoke volumes. This photo says to women: Your right to make choices about your health and your body is being taken back from you.

I am the proud father of three daughters and five granddaughters. I don't want the men in these pictures making decisions for my daughters or my granddaughters when it comes to their health and their well being and their families' well-being. Thank goodness, all of my children have children. They have wonderful families. But they have to take care of those families. If their health is jeopardized by a pregnancy or a disease, I want them to be able to take care of it.

Not here. These men will make your choices for you.

I am old enough to remember a time when women were not permitted to make choices, when women couldn't hold certain positions in society. There was a time when women couldn't vote. We have made great strides forward to advance women's rights, and one of those rights is the right to choose. But look at this picture. These fellows are eager to snatch those rights away from women.

The absence of women on the stage says something. Make no mistake. We have more than a dozen women in the Senate. I don't know what the count is in the House. Not one of them stood on this floor during the debate and defended that law that was passed and signed so smugly at the White House. I call this a ''malegarchy'' and this photo captures the essence of the ''malegarchy'' women live under today.

If we keep going backwards, maybe it will be possible our women will live like they do in parts of the Middle East and have to wear burqas. The men will decide.

I think it is shameful. It is embarrassing to see this image in the 21st century in the United States of America. Have we entered a time warp? In some ways we have. Ultra right-wing conservatives who control this Congress and control the White House are more in line with the thinking of the 19th century than the 21st century.

The conservatives today speak of ''traditional family values'' and protecting marriage. Those are their buzz phrases, but you look back in history and what you see here is a repeat of the same themes constantly used to keep women subservient. I couldn't get away with that in my household.

In 1914, during the battle over the women's right to vote, there was a group called the Nebraska Men's Association Opposed to Women's Suffrage—that was the title of the organization. It was organized in 1914. The group published a document expressing its reasons for opposing women's suffrage. The association claimed if we give women the ability to vote, to make electoral choices, then that would lead to ''attempts to change home and marriage.'' Does that sound familiar? It is the same rhetoric we hear today. In this picture, it is the same rhetoric being used at this bill signing.

We also hear about the ''culture of life.'' What about the woman's life? What about her health? This law does not include a health exception. What if a woman's health is in danger? What if her life is ultimately threatened by complications stemming from the pregnancy? And where is the culture of life when that fetus is born? Where is the culture of life for children who have been born?

Earlier in this Congress, the anti-choice conservatives led the fight against the child tax credit for low-income working families. Where are the family values in that? Where is the culture of life in that?

How about nutrition for those children? How about education for those children? How about health care for those children?

We have seen ''no'' vote after ''no'' vote on funding these programs for making our children healthier and brighter and more productive.

I was pleased to see the Federal courts in Nebraska and New York issue injunctions against this unconstitutional abortion law. The vast majority of legal scholars predict this law will be easily overturned, based on Roe v. Wade, and it should.

The famed American suffragette Elizabeth Cady Stanton said ''men want their rights and nothing more, but women want their rights and nothing less.'' As we can see with the signing of this bill, women's rights are still under attack. We must not settle for anything less than full reproductive rights for women in America.

CONGRESSIONAL PORK

Mr. MCCAIN. Mr. President, I would like to address an article that appeared on the front page of Roll Call on Thursday, November 8. The title of the article was ''McCain Breaks Own Pork Rule,'' and it addressed my efforts, as a member of the Senate Armed Services Committee, to secure authorized funding—I emphasize authorized—for land acquisition at Luke Air Force Base in Arizona. Sadly, the headline was misleading and the article itself was simply inaccurate.

As my colleagues know—and I see my colleague from West Virginia in the Chamber—for many years I have made it a point to carefully scrutinize the annual appropriations bills which are, in my view, wasteful porkbarrel spending. I have specific criteria for identifying these projects which are very clear. Simply put: If an item is requested by the administration or properly authorized, I do not object to it and I do not consider it a porkbarrel project. Having said that, let me address the situation discussed in the Roll Call article.

The authorization for funds for the land acquisition at Luke Air Force Base was included in both the House Armed Services Committee markup of the fiscal year 2003 Defense authorization bill and the fiscal year 2003 authorization conference report, and in the Senate Armed Services Committee markup of the fiscal year 2004 authorization bill. As a member of the authorizing committee, I readily admit I worked hard to procure the authorized funds necessary for the land acquisition. As all of my colleagues are aware, authorizing the expenditure of Federal funds before appropriating them is the proper process. It is the way we are supposed to do things in this body.

As no one disputes, the authorization bill includes a provision for the Luke land acquisition. It will be adopted by both Chambers and signed into law by the President. I cannot recall a Defense appropriations or Military Construction appropriations markup occurring after the Defense authorization bill conference report was signed into law. As my colleagues know, appropriators have only the Senate-passed authorization bill to use in determining whether projects proposed for inclusion in their markup are authorized.

Simple fact and not my opinion—I emphasize, it is a fact, not my opinion—rule XVI of the Standing Rules of the Senate expressly acknowledges that Senate bills that were previously passed in the current session authorize appropriations. The rule states in part that:

> The term unauthorized appropriation means an appropriation (i) not specifically authorized by law or Treaty stipulation unless the appropriation has been specifically authorized by an Act or resolution previously passed by the Senate during the same session. . . .

That is exactly what happened with the authorization bill. Therefore, the Senate considers it authorized when the authorization bill passes the Senate, not when the conference report is signed into law. Again, this is a standing rule of the Senate, not an arbitrary decree of my own. I have never objected to an appropriation on the grounds that while it was authorized in the Senate-passed bill and was accepted by House and Senate conferees, the conference had yet to finish its work. I consider such an appropriation to be authorized while consistent with Senate rules and the fact that the report had yet to be voted only a technical formality.

The article also suggested that I requested from the Military Construction Appropriations Subcommittee an unauthorized earmark for Luke Air Force Base. That suggestion is simply not true. I categorically deny ever approaching any member of the Appropriations Committee in order to request funding for this project, or any other project for that matter. It just simply didn't happen.

If there is any member of the Appropriations Committee who will come forward and say that I did, I would be very interested, because it didn't happen.

The fact is, when I was approached by the chairman of the Senate Military Construction Appropriations Subcommittee, who informed me that if I wanted the money authorized for Luke included in her subcommittee's markup, I would have to send her a letter requesting it, I firmly refused to do so, noting only in conversation with the chairman that the money had been authorized and that the appropriators should follow that instruction.

I believe strongly, as every Member of the Senate knows, that appropriators should follow the instructions of the authorizing committees. And no one should have to write a letter requesting it. I never have.

It has come to my attention that three different members of the Appropriations Committee told the Roll Call reporter responsible for this article that I approached them and requested this funding. Again, this is not true. I challenge any member of the House or Senate Appropriations Committee to come forward and prove I made any such request.

I have with me a letter to the editor of Roll Call from Tom Schatz, president of Citizens Against Government Waste. As my colleagues know, Citizens Against Government Waste is a very well respected and nonpartisan government watchdog organization. I have worked with them for many years, and I am proud of our joint efforts to combat wasteful spending. In the letter Mr. Schatz says:

> Citizens Against Government Waste (CAGW) is concerned about the accuracy of the article, ''McCain Breaks Own Pork Rule,'' that Roll Call published on November 6. [Citizens Against Government Waste] is dedicated to hunting down pork-barrel projects in every appropriations bill. In fact, CAGW's fiscal Congressional Pig Book contained 9,362 pork-barrel projects. Senator John McCain has been the leading voice in the Senate trying to stop this egregious practice. As for the $14.3 million for Luke Air Force Base mentioned in your article, Sen. McCain has assured us he did not request any unauthorized fund from any member of the appropriations committee.
>
> We have worked closely for many years with Senator McCain in our joint effort to combat wasteful government spending. He believes that spending provisions, particularly defense-related projects, be contained in the Department of Defense authorization bill. Senator McCain serves on the Senate Armed Services Committee, and he readily admits that he worked hard to ensure that funding for Luke AFB was included in the Senate DOD authorization bill. The timing of the authorization versus appropriations bills is a red herring in this story, designed to make it appear that Senator McCain has violated his own rules on pork barrel spending.
>
> Sincerely,
>
> Tom Schatz, President, Citizens Against Government Waste.

Mr. President, I regret I had to take the time of the Senate to address this issue. I feel it is important for my colleagues to know the truth. I know very well if I violated my own rules, it would get a lot of publicity and longevity. I have not done that in 17 years, and I will not. That is why I come to the floor today to correct what was written in that article.

I have been very diligent in ensuring my office never violates the same standards for appropriations to which I have long insisted my colleagues adhere. I did not do so in this case and I will not do so in the future. I appreciate the indulgence of my colleague from North Dakota.

I yield the floor.

TANKERS

Mr. MCCAIN. Mr. President, I commend the Chairman of the Senate Armed Services Committee, the senior Senator from Virginia, Senator JOHN WARNER for putting the Committee on Armed Services back on the map of relevancy and like any sea captain with a steady hand decisively changing the course of the committee from just a debating society. I believe that the Appropriations Committee will think twice before they try to pull this off again. This began in September 2001 when Secretary Roche, the Boeing Company and the Appropriations Committee decided to lease 100 Boeing 767 tankers and go around the traditional budget process at the Pentagon, go around the Secretary of Defense, go around the Office of Management and Budget, go around the authorizing committee—(SASC)—and insert a $30 billion new start lease of 100 Boeing 767 aerial refueling tankers into the Department of Defense Appropriations Act for Fiscal Year 2002—without a single hearing, debate, or vote.

However, late yesterday afternoon Secretary Wolfowitz sent a letter to the defense committees which would enable the SECAF to sign a contract for the requisition of 100 tankers now, and to buy 80 of them on delivery.

This language has negative financial and budgetary implications. Importantly, it will provide that lease-unique disbursements, such as construction financing—$7.5 million per plane—lease administration costs—costing up to $5.5 million per plane; FAA certification—which would be considerable and yet unnecessary when the Air Force owns the planes; and other costs such as operating expenses for any special-purpose entity extend to the order of 80 tankers—which the SECAF will buy.

In addition, the USAF will not be required to set aside money now for the purchase of these tankers. So, when the tankers are built, the USAF will have to come up with the cash to pay for them. But, at that point, the temptation will be simply to extend the lease and not convert to a buy when the time comes to do so. So, this proposal puts no pressure on the USAF to make choices before starting to build planes number 21–100. Instead, it will have Congress over a barrel to pay for planes already built under the tanker lease regime. Thus, as is the case under

the original lease proposal, the USAF will get its tankers in a way that defers the payment burden to someone else at some unspecified point in the future.

This is what we were trying to originally avoid.

The language we agreed to late last night is clear and would unequivocally prevent the USAF from leasing more than the 20 tankers.

And more importantly will prevent ''costs that are unique to this lease arrangement . . . costs for issuing the bonds required to finance the lease or the construction of the tankers, operating expenses for the special-purpose entity, lease administration fees, FAA certification costs, etc.'' apply to the subsequent 80 aircraft.

The Air Force will be forced to, just like the other military services do, obtain budget authority before placing an order for the purchase of tankers or before Boeing spends any money for the construction of those planes. Because this will require the USAF to pay at the time of order, make progress payments and acquire the tankers under two separate contracts, as it should, potential savings could be as much as $5.2 billion according to unofficial CBO estimates.

Remarkably, the key threshold issue of corrosion remains an open issue. CRS still believes that, to date, the DOD has not provided a thorough corrosion assessment as the SASC asked for. And, the two reports that Secretary Roche cited as updating the Economic Service Life Study, ESLS, which concluded that the current fleet is viable to 2040, are in no way comparable in sophistication, depth or scope. So, to date, the DOD has produced, despite numerous requests, any data or analysis that invalidates the conclusions of the ESLS.

The November 5, 2003, letter from the Deputy Secretary of Defense to Chairman WARNER is disturbing. In this letter, the DOD describes how it intends to proceed acquiring tankers under the legislative language agreed upon by the conferees 2 days ago. In particular, it indicates that the DOD intends to sign the current contract for the acquisition of all the tankers now and not obtain requisite budget authority until the out-years to fund the purchase of the tankers.

According to the letter, the DOD will fund its purchase of the 80 tankers by adding $3.8 billion in the out-years to ''achieve[] an immediate start to the program and allow [for the] purchase [of] the last 80 aircraft at time of delivery.''

There are several problems with this:

It seems inconsistent with the plain language of the bill that the conference has agreed upon—that the USAF buy up to 80 aircraft under a multi-year procurement/incremental funding methodology.

It will likely result in the proposals being scored as a $18 billion ''direct purchase.''

It suggests that taxpayers will be stuck with unnecessarily having to pay for construction financing costs at a premium open-market rate and other lease-unique disbursements.

It is unabashedly similar to what the USAF intended to do under the original contract to lease 100 tankers, and I appreciate that we now have a commitment, as Senator WARNER said on the floor of the Senate, that would put this program back into the traditional procurement process, this program back into the traditional budget process, and this program back into the traditional authorization process.

I yield.

TRIBUTE TO DR. S. KING SANDERS

Mr. BROWNBACK. Mr. President, I rise to honor Dr. S. King Sanders, who passed away October 30, 2003. I hope my colleagues will join me in expressing condolences to his family in this great loss.

King Sanders left a worthy and memorable legacy for his wife, Rose; his children, Courtney and Michael, and other family members and friends to remember him by. He was a vocational Christian minister for 30 years, working as a director of missions and then a pastor in New Mexico for 20 of those years. During the last 14 years of his life, King also worked in the public policy arena. He served as liaison to the New Mexico legislature on behalf of that State's Baptist convention for eight years. Beginning in 1997, he worked here in Washington for the Ethics & Religious Liberty Commission of the Southern Baptist Convention.

His behind-the-scenes work in our Nation's Capital supported the efforts of the ERLC and others to make this country all it should be. He used his abilities and position in the effort to protect all human life, from conception to natural death. King worked to help expand religious freedom to all people in this country and around the world. He was concerned about marriages and families, and sought to strengthen them and protect them from the ravages of harmful forces in our culture. He also worked earnestly to motivate citizens to become more involved in the political process.

For King, relationships were foremost. He loved people and served them in many ways. He constantly expressed concern for others, even in the midst of the health problems that plagued him near the end of his life. His love for others and his concern for their welfare were based on his relationship with God by faith in Jesus Christ.

King Sanders was the best of what this country is all about. He wanted America to be a great force for good in the world, and he wanted the lives of Americans to be blessed. All who knew him will miss him, and we pay tribute to his influential life and legacy.

I yield the floor.

NEW TERMINAL AT ABERDEEN REGIONAL AIRPORT

Mr. DASCHLE. Mr. President, I would like to speak about an important ceremony occurring this Veterans Day in my home town: the dedication of a new terminal at Aberdeen Regional Airport.

Community leaders have chosen Veterans Day for this event because the terminal will be called the War Memorial Building. It will be located on the grounds of Saunders Field, named for General LaVerne Saunders, a World War II hero from Aberdeen.

A plaque inside the new building proclaims:

> The City of Aberdeen dedicates this building and sculpture to the brave men and women who served and continue to serve to protect the values we all cherish: freedom, justice and democracy.
>
> The War Memorial sculpture recognizes the courage they have shown and continue to show in the service of our great nation. They will never be forgotten.
>
> Let us reflect on the past and hope that we might learn as a world to live in peace.

Those words are a fitting tribute to our nation's heroes, past and present, and are especially fitting in a year that has seen a new generation take up arms in defense of the homeland. Aberdeen is one of the communities that has been touched by the largest call-up of South Dakota Guard and Reserve troops since World War II.

This terminal was constructed with funds from the Federal Aviation Administration, State and local government, and a Senate amendment to the fiscal year 2001 transportation appropriations act. I remain grateful to Senator FRANK LAUTENBERG, former ranking member of the Transportation Appropriations Subcommittee, for helping me secure $2.5 million in that legislation. The Senate funds completed the financing for this project and allowed it to move ahead without further delay.

The project is a step into the future for one of the busiest airports in South Dakota. It replaces a 50-year-old facility, providing improved security measures, additional ticket counter space, and expanded baggage claim areas. It will improve access for disabled passengers. It will shorten the time that planes spend taxiing, thus resolving a long-standing problem of flight cancellations due to wing icing. Given the critical role that airports play in economic development, I also see this new terminal as a long-term investment in Aberdeen's prosperity.

This project required a great deal of hard work and dedication, and I would like to thank some people who made it possible: Mayor Tom Hopper, the airport board and staff, the Aberdeen City Commission, the Brown County Commission, the Aberdeen Chamber of Commerce, architects Herges Kirchgasler Geisler & Associates, engineers Helms and Associates, Transportation Director Dave Osborn, and former airport managers Tom Wylam and Rebecca Hupp.

This facility is a wonderful tribute to America's veterans, and a valuable asset for the people of northeastern South Dakota. Congratulations, Aberdeen, on another job well done.

Mr. REID. Mr. President, I rise today to express my congratulations and warm wishes to Bjorn Selinder as he retires from his position as Churchill County Manager in the State of Nevada.

Bjorn, affectionately known as ''BJ'', has led a selfless life as a public servant, friend, husband and father. Born in Goteborg, Sweden, Bjorn, his brother and his parents immigrated to the United States in the early 1950s and moved to Minneapolis, MN.

After Bjorn graduated from Southwest High School, he ended up in California where he met the love of his life, Judy Moffatt. Soon after he met her, they married in 1996 and later moved to Nevada in 1973 to raise their children and start a family business.

Bjorn originally went to Churchill County looking for a short-term job. Twenty-seven years later, he is one of the longest serving county managers in the State of Nevada.

When he first joined Churchill County in August of 1974, his duties were coordination and planning activities and acting as assistant to the county manager. A short 2 years later, BJ became the Churchill County manager.

Prior to moving to Fallon, Nevada, Bjorn received his bachelors degree in management science from Sierra Nevada College and did post graduate work at the University of Nevada Reno.

He worked in the aerospace and ordinance industries when he lived in southern California and Minneapolis. He also came to Churchill County with an understanding about how to run a small business.

Throughout Bjorn's life as a public servant, his wife Judy has been the rock on which he leans. With the road of retirement stretching before them, they plan to spend time with their three grandchildren and their two daughters, Kristen and Majken. I am sure BJ will also put in a few hours on the lovely Fallon golf course.

Bjorn Selinder is leaving his job, but he's not leaving the community. As he goes about his new life, I hope he will take time every day to look around at the county he helped create, and know that his work is appreciated.

I congratulate Bjorn on a job well done and wish him an enjoyable retirement.

VOTE EXPLANATION

Mr. NELSON of Nebraska. Mr. President, I ask that the following information be entered into the RECORD. I was unavoidably absent for rollcall votes on Thursday, October 30, 2003 as I was attending a funeral in Omaha, NE. As a result, I would ask that the RECORD reflect the following:

On vote No. 419, if present and voting, the Senator from Nebraska (Mr. NELSON) would have voted ''yea.''

On vote No. 420, if present and voting, the Senator from Nebraska (Mr. NELSON) would have voted ''yea.''

On vote No. 421, if present and voting, the Senator from Nebraska (Mr. NELSON) would have voted ''nay.''

On vote No. 422, if present and voting, the Senator from Nebraska (Mr. NELSON) would have voted ''yea.''

On vote No. 423, if present and voting, the Senator from Nebraska (Mr. NELSON) would have voted ''yea.''

On vote No. 424, if present and voting, the Senator from Nebraska (Mr. NELSON) would have voted ''yea.''

On vote No. 425, if present and voting, the Senator from Nebraska (Mr. NELSON) would have voted ''yea.''

On vote No. 426, if present and voting, the Senator from Nebraska (Mr. NELSON) would have voted ''yea.''

On vote No. 427, if present and voting, the Senator from Nebraska (Mr. NELSON) would have voted ''yea.''

On vote No. 428, if present and voting, the Senator from Nebraska (Mr. NELSON) would have voted ''yea.''

On vote No. 429, if present and voting, the Senator from Nebraska (Mr. NELSON) would have voted ''yea.''

On vote No. 430, if present and voting, the Senator from Nebraska (Mr. NELSON) would have voted ''yea.''

On vote No. 431, if present and voting, the Senator from Nebraska (Mr. NELSON) would have voted ''nay.''

On vote No. 432, if present and voting, the Senator from Nebraska (Mr. NELSON) would have voted ''nay.''

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

In pronouncing sentence on 21-year-old Yitzak Abba Marta, Circuit Judge William Storey told the court, ''this was nothing more than a hate crime . . . this person was killed because he was gay.'' Marta was convicted for the 1996 beating and strangling death of Alan Fitzgerald Walker, a transvestite. Marta and an accomplice picked up Walker outside of a gay nightclub while he was dressed as a woman. Police were called to Walker's home 3 days later when neighbors became suspicious of his disappearance. Not only had he been absent, but the tires on his car had been slashed, and there were notes on his door. Police found Walker's body in his bedroom with ''KKK'' scrawled in blood on an adjacent wall.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

UNIVERSAL SERVICE

Mr. JOHNSON. Mr. President, the Senate Committee on Commerce, Science, and Transportation held a hearing last week on the Universal Service Fund, USF, and I would like to take a few moments to share with my colleagues some thoughts on this topic. As many of my colleagues know, the survival and strength of this fund is critically important to providing affordable, state-of-the-art telecommunications services to rural and high-cost areas. Without universal service support, many residents in South Dakota and other rural areas would not have the opportunity to share in the benefits of quality telephone and data services.

I have recently cosponsored S. 1380, the Rural Universal Service Equity Act of 2003, which would change the formulas that determine the distribution of universal service high-cost funds among nonrural telephone companies. I believe this legislation is necessary to address an inequity in the current formulas limiting the amount of high-cost support so called nonrural companies such as Qwest receive from the USF. While I am pleased that under this legislation, South Dakota would receive more support than it currently does, I am mindful that it does so at the expense of other States and Puerto Rico.

Under the current USF system, although Qwest provides telephone service to many South Dakota residents, including some in very rural and high cost areas, it receives no universal service support from the high-cost model for operations in South Dakota. This has the practical effect of forcing Qwest to keep rates in other areas of my State higher than they otherwise would be in order to subsidize service in the high cost areas.

Although I support this legislation, I recognize that it does not address the more fundamental issues threatening the sustainability of the universal service fund. The entire universal service system is jeopardized because of a shrinking contribution base and increased demands. Without addressing these fundamental problems related to the viability of the system as a whole, the change in the formulas as proposed in S. 1380 will have limited value.

I urge my colleagues to work in a bipartisan manner to help assess and develop comprehensive solutions to the many outstanding and emerging issues that confront the universal service program. We can do no less if we truly believe in the underlying principles of this longtime national policy that has proven so vital to both our economic and national security.

FDA CBER RESEARCH ACTIVITIES FUNDING

Mr. BENNETT. Mr. President, the fiscal year 2004 Agriculture, Rural Development and Related Agencies Appropriations Act includes appropriations for the Center for Biologics Evaluation and Review of the Food and Drug Administration to continue important vaccine and biological product research activities. Support of these research activities is essential for keeping CBER scientists and medical reviewers up-to-date and knowledgeable of the breakthrough science of vaccine and biological product research and development. Being involved in this cutting edge research better equips CBER scientists and reviewers with the best scientific-based tools for reviewing and regulating the safety and efficacy of live-saving vaccines and other biological products.

During our subcommittee and Committee deliberations, many colleagues shared my concerns about the emergence of SARS, West Nile Virus, monkey pox, antibiotic resistant staphylococcal infections in hospitals, and other naturally-occurring infectious diseases in the U.S. I believe there is a need to expedite the development and licensing of new vaccines and biologicals to protect our citizens from these naturally-occurring infectious diseases. As with recent efforts and increased appropriations to augment research, regulatory testing and scientific capabilities of the FDA to assist in combating bioterrorism threats, I endorse FDA's continued support of those capabilities at the Center for Biologics Evaluation and Research to combat the public health threats from naturally-occurring diseases. It is my view that continued support of these capabilities will better enable the Center to recruit and retain highly-qualified, motivated scientists and medical reviewers for vaccines and other biological products.

In past years, CBER scientists engaged in laboratory and clinical research, which greatly improved their understanding of the science, their mission of assuring the safety and efficacy of the products under review by FDA, the medical needs of patients, and alternative products available. This understanding resulted in a more efficient and rapid agency licensing processes for many new products, which presented complex scientific, medical and public health issues. For example, CBER reviewers deeply involved in relevant laboratory research were responsible for the complex yet expeditious regulatory review and licensing of the four combination diphtheria-tetanus-acellular pertussis (DTaP) vaccines and the four Hib (meningitis) conjugate vaccines during the last decade.

Past CBER research has significantly contributed to technology transfer and benefited the public through the development of assays and reagents, which would otherwise be too costly and time-intensive for industry to duplicate. This research has facilitated the expedited testing, development, and availability of several important licensed vaccines for the prevention of life-threatening pediatric diseases and is critical for others currently under development for licensing in the future.

Mr. President, I urge the Administration to provide sufficient funding in fiscal year 2005 for continued CBER research. These appropriations are essential for expediting not only the development and availability of licensed counter-bioterrorism vaccines and biological products, but also for those intended for the prevention and treatment of naturally-occurring infectious diseases, such as SARS, West Nile Virus and HIV–AIDS.

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT

Mr. LEVIN. Mr. President, 2 weeks ago, the majority leader indicated that before this session of Congress comes to an end, the Senate may consider the Protection of Lawful Commerce in Arms Act, a bill the New York Times has said ''would give gun manufacturers and dealers a courthouse shield that tobacco and asbestos companies never had in being forced to come to terms with some of the damage their products inflict.'' While it now appears unlikely that the bill will be considered in the Senate this year, I would nevertheless like to express my concerns about it.

The bill would rewrite well-accepted principles of liability law, providing the gun industry legal protections enjoyed by no other industry. Some claim that this bill would prevent frivolous lawsuits and protect firearm manufacturers, dealers, and distributors from being held responsible for the actions of criminals. While most gun dealers and manufacturers may conduct their business responsibly, this bill would shield negligent and reckless gun dealers and manufacturers from legitimate civil lawsuits.

In fact, according to the Brady Campaign to Prevent Gun Violence and the Violence Policy Center, many meritorious cases could be dismissed under the bill. And according to a letter from University of Michigan Law Professor Sherman Clark, the case filed by the Washington, D.C. area sniper victims is among those that would not survive if the legislation were enacted. I ask unanimous consent that a copy of Professor Clark's letter be printed in the RECORD.

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

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL,
Ann Arbor, MI, November 6, 2003.

DEAR MEMBERS OF THE UNITED STATES SENATE: As a professor of law at the University of Michigan Law School, I write to make two points regarding the legal implications of S. 1805, the ''Protection of Lawful Commerce in Arms Act.''

First, S. 1805 would represent a substantial and radical departure from traditional principles of American tort law. Though described as an effort to limit the unwarranted expansion of tort liability, the bill would in fact represent a dramatic narrowing of traditional tort principles by providing one industry with a literally unprecedented immunity from liability for the foreseeable consequences of negligent conduct.

Second, more specifically, and by way of illustration, S. 1805, as currently drafted, would mandate the dismissal of litigation currently pending against the dealer and manufacturer who are alleged to have negligently enabled John Allen Muhammed and Le Boyd Malvo to obtain the assault rifle used in the recent D.C. sniper killings.

S.1805 IS INCONSISTENT WITH TRADITIONAL PRINCIPLES OF TORT LAW

S. 1805, described as ''a bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others,'' would largely immunize those in the firearms industry from liability for negligence. This would represent a sharp break with traditional principles of tort liability. No other industry enjoys or has ever enjoyed such a blanket freedom from responsibility for the foreseeable and preventable consequences of negligent conduct.

It might be suggested that the bill would merely preclude what traditional tort law ought to be understood to preclude in any event—lawsuits for damages resulting from third party misconduct, and in particular from the criminal misuse of firearms. This argument, however, rests on a fundamental misunderstanding of American tort law. American law has never embraced a rule freeing defendants from liability for the foreseeable consequences of their negligence merely because those consequences may include the criminal conduct of third parties. Numerous cases from every American jurisdiction could be cited here, but let the Restatement (Second) of Torts suffice:

§ 449. TORTIOUS OR CRIMINAL ACTS THE PROBABILITY OF WHICH MAKES ACTOR'S CONDUCT NEGLIGENT

If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious, *or criminal* does not prevent the actor from being liable for harm caused thereby. (emphasis supplied)

Thus, car dealers who negligently leave vehicles unattended, railroads who negligently manage trains, hotel operators who negligently fail to secure rooms, and contractors who negligently leave dangerous equipment unguarded are all potentially liable if their conduct creates an unreasonable and foreseeable risk of third party misconduct, including illegal behavior, leading to harm. In other words, if the very reason one's conduct is negligent is because it creates a foreseeable risk of illegal third party conduct, that illegal conduct does not sever the casual connection between the negligence and the consequent harm. Of course, defendants are not automatically liable for illegal third party conduct, but are liable only if—given the foreseeable risk and the available precautions—they were unreasonable (negligent) in failing to guard against the danger. In most cases, moreover, the third party wrongdoer will also be liable. But, again, the bottom line is that under traditional tort

principles a failure to take reasonable precautions against foreseeable dangerous illegal conduct by others is treated no differently from a failure to guard against any other risk.

S. 1805 would abrogate this firmly established principle of tort law. Under this bill, the firearms industry would be the one and only business in which actors would be free utterly to disregard the possibility that their conduct might be creating or exacerbating a potentially preventable risk of third party misconduct. Gun and ammunition makers, distributors, importers, and sellers would, unlike any other business or individual, be free to take no precautions against even the most foreseeable and easily preventable harms resulting from the illegal actions of third parties. Under S. 1805, a firearms distributor could park an unguarded open pickup truck full of loaded assault rifles on a city street corner, leave it there for a week, and yet be free from any negligence liability if and when the guns were stolen and used to do harm.

It might appear from the face of the bill that S. 1805 would leave open the possibility of tort liability for truly egregious misconduct, by virtue of several exceptions set forth in Section 4(5)(i). Those exceptions, however, are in fact quite narrow, and would give those in the firearm industry little incentive to attend to the risks of foreseeable third party misconduct.

One exception, for example would purport to permit certain actions for ''negligent entrustment.'' The bill goes on, however, to define ''negligent entrustment'' extremely narrowly. The exception applies only to sellers, for example, and would not apply to distributors or manufacturers, no matter how egregious their conduct. Even as to sellers, the exception would apply only where the particular person to whom a seller supplies a firearm is one whom the seller knows or ought to know will use it to cause harm. The ''negligent entrustment'' exception would, therefore, not permit any action based on reckless distribution practices, careless handling of firearms, lack of security, or any of a myriad potentially negligent acts.

Anotehr exception would leave open the possibility of liability for certain statutory violations, variously defined, including those described under the heading of negligence per se. Statutory violations, however, represent just a narrow special case of negligence liability. No jurisdiction attempts to legislate standards of care as to every detail of life, even in a regulated industry; and there is no need. Why is there no need? Because general principles of tort law make clear that the mere absence of a specific statutory prohibition is not carte blanche for unreasonable or dangerous behavior. S. 1805 would turn this traditional framework on its head; and free those in the firearms industry to behave as carelessly as they would like, so long as the conduct has not been specifically prohibited. If there is no statute against leaving an open truckload of assault rifles on a street corner, under S. 1805 there could be no tort liability. Again, this represents radical departure from traditional tort principles.

S. 1805 WOULD REQUIRE THE DISMISSAL OF PENDING D.C. SNIPER LITIGATION

Litigation is currently pending in Washington State against the manufacturer and dealer from whom John Allen Muhammed and Leo Boyd Malvo obtained the assault rifle used in the D.C. area sniper killings. The lawsuit, brought on behalf of victims' families, alleges in essence that the defendants' negligent practices and inadequate security made this weapon available to Muhammed and Malvo. There is nothing innovative or cutting edge about this litigation; and it is certainly not based on any new or liability-expanding theory. Rather, it alleges straightforward negligence, and is analogous to the sort of case that might be brought against a contractor who leaves explosives unguarded at a construction site. Allegedly, the firearm in question was so poorly secured that 17-year-old Lee Boyd Malvo was able simply to pick it up and walk out of the store.

S. 1805, as currently drafted, would require the dismissal of this litigation. The lawsuit pending is a ''qualified civil action'' under the bill, because the harm came about through the ''criminal or unlawful misuse of a firearm;'' and the bill clearly provides that any such action ''pending on the date of enactment of this Act shall be immediately dismissed.''

None of the exceptions enumerated in the bill would operate to save the litigation currently pending in Washington State. It is not based on an alleged statutory violation, but on the alleged failure of the defendants to take due care to secure firearms. Nor does the litigation fit the bill's narrow statutory definition of ''negligent entrustment.'' As noted, that theory would not apply in any event to the manufacturer or distributor, and would not apply to a seller in this case, whose alleged negligence consists not of supplying the rifle to a particular person, but in so failing to secure it that it was literally available to anyone who walked in the door.

My aim here is not to make a claim about the merits of the pending D.C. sniper litigation, but rather to illustrate the scope of S. 1805. Whether or not the defendants in that case were in fact so negligent in their keeping of firearms that they should be found liable for negligence under Washington State law is a question for the courts of that State. The important point here is that under S. 1805, those defendants would be free of liability no matter how careless they had been. It is for this reason that the bill would require the dismissal of that case. And it is this light that one can see the true scope and import of S. 1805. The bill, as currently drafted, would not simply protect against the expansion of tort liability, but would in fact dramatically limit the application of long-standing and otherwise universally applicable tort principles by precluding, or requiring the dismissal of, cases alleging traditional negligence liability.

Sincerely,

SHERMAN J. CLARK.

Mr. LEVIN. The two alleged snipers were both legally prohibited from buying guns, but through the apparent negligence of a gun dealer, they were able to obtain the military-style Bushmaster assault rifle. Reportedly, the gun dealer operated in such a grossly negligent manner that 238 guns inexplicably disappeared from its store. Among the missing guns were the alleged snipers' Bushmaster rifle. Several of the snipers' victims have filed a lawsuit against the dealer and others. Their case might not survive if this bill became law.

This bill would set a dangerous precedent by giving a single industry broad immunity from civil liability and depriving many victims with legitimate cases of their day in court. If it is enacted, other industries will almost certainly line up for similar protections.

Every single gun safety organization has expressed its opposition to this bill. This is special interest legislation. It should not be adopted.

THE LONG REACH OF THE HEAVY BOMBERS

Mr. JOHNSON. Mr. President, I rise today to draw my colleague's attention to an article published in the November 2003 edition of Air Force Magazine entitled ''The Long Reach of the Heavy Bombers.''

The article outlines the importance of our Nation's long-range bomber fleet, and in particular notes the increasing role the B–1 bomber is having in our national security planning.

I am extremely proud that Ellsworth Air Force Base in my State of South Dakota is home to the B–1 bombers and crews of the 28th Bomb Wing. Their contributions in Operation Iraqi Freedom were critical to our military success. Although B–1s flew fewer than 2 percent of the combat sorties in Operation Iraqi Freedom, they dropped more than half the satellite guided Air Force Joint Direct Attack Munitions, JDAMs, and maintained a 79 percent mission capable rate. The B–1s were assigned against a broad range of targets in Iraq, including command and control facilities, bunkers, tanks, armored personnel carriers, and surface-to-air missile sites. They also provided close air support for U.S. forces engaged in the field.

Given the demonstrated capabilities of the B–1 and its importance to our military, we need to continue to invest in the technological improvements that will maintain the B–1s role as the backbone of our bomber fleet. I am pleased that Congress enacted legislation earlier this year that will return 23 B–1s to the active inventory, and I look forward to working with the Air Force and my colleagues in the Senate to ensure that we provide the resources necessary to fully upgrade these planes.

I close by commending the men and women stationed at Ellsworth Air Force Base and thanking all of the members of our Armed Forces for their sacrifices on behalf of our Nation's security.

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

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

THE LONG REACH OF THE HEAVY BOMBERS

(By Adam J. Hebert)

In mid-2001, the B–1B was in trouble. Years of fiscal stringencies had left the bomber with a $2 billion modernization backlog, poor reliability, rising upgrade costs, and some major combat deficiencies.

Secretary of Defense Donald H. Rumsfeld, reflecting the prevailing view, charged the B–1 ''is not contributing to the deterrent or to the warfighting capability to any great extent.'' Indeed, the purported backbone of the Air Force heavy bomber fleet seemed destined for the scrap heap.

Then, things changed, and, just two years later, the B–1B became one of the star weapon systems in Operation Iraqi Freedom. Just 11 aircraft deployed to the combat theater. However, commanders set up and maintained B–1B ''orbits'' that kept at least one of the B–1Bs in the air around the clock, ready to

engage emerging targets with huge loads of precision weapons.

Mission capable rates soared, and modernization programs were funded and put back on track.

For the Air Force's long-range bombers, the wars in Afghanistan and Iraq provided some of their finest hours. Their performance in many ways validated the service's bomber investment programs. USAF's B–1, B–2, and B–52 bombers were heavily tasked and proved to be highly effective in the two recent wars—and turned in several combat ''firsts.''

As Air Force planners describe it, the B–1Bs served as ''roving linebackers,'' circling the battlespace and waiting for a call instructing them to unleash deadly satellite guided Joint Direct Attack Munitions. B–1Bs and B–52Hs performed close air support strikes for ground forces, and the venerable B–52H, the last of which was built in 1962, delivered laser guided bombs using newly installed Litening targeting pods. B–2s used new deployable shelters and were ''turned'' at a forward location to perform additional combat missions.

At least once, B–7B, and B–52H aircraft all were employed in the same strike package.

NO SURPRISE

''It is no surprise that those aircraft and platforms were used in the way they were,'' said Maj. Gen. David A. Deptula, Air Combat Command's director of plans and programs. He said that the results of bomber usage over the past two years have confirmed what proponents of long-range strike capabilities had said for a long time: The range, payload, precision capabilities, and flexibility of bombers make them a superb weapon whose uses go well beyond mere ''carpet bombing.''

Gen. John P. Jumper, the Air Force Chief of Staff, offered one example of the new way of doing business. A combat controller in Afghanistan sent enemy coordinates ''up to a B–52 at 39,000 feet, and the B–52 put laser guided munitions down'' on a target that was only 1,000 feet in front of friendly forces.

''That's the effect of close air support,'' Jumper said. ''You [didn't] see the airplane or feel the heat from the engines, but the precision was even better than we were able to do in Vietnam.''

''This is not a surprise,'' Deptula said, noting that USAF decided years ago to push for improved bomber defensive systems, data links, and the ability to deliver smart weapons, all with an eye to making long-range systems effective in the future.

In the zero-sum game of defense budgeting, however, long-range strike has clearly suffered at times.

For example, DOD's response to the chronic underfunding of the B–1 fleet was not to fully fund the program but rather was to slash its numbers. USAF announced in 2001 that it would retire one-third of the B–1B fleet—dropping it from 93 to 60 aircraft—consolidate what remained at two bases, and use the savings to eliminate the $2 billion modernization backlog.

Some bomber partisans were up in arms, but the plan has worked, so far as it goes. Within the slimmed-down fleet, 36 B–1B aircraft were kept combat ready, with the other 24 in training status, depot maintenance, or test. That has been sufficient for the wars of recent years. Officials have long maintained that they would prefer a small fleet of effective aircraft to a large fleet of deficient systems.

The B–1B's MC rate—the percentage of aircraft ready to perform their primary mission at any given time—has increased steadily since the decision.

The Institute for Defense Analyses, a federally funded research center, determined back in 1995 that B–1B MC rates are heavily dependent upon sufficient spare parts, equipment, and personnel. Until the retirements began, the Air Force was never able to give the bomber the sustained support it required.

The B–1B MC rate has risen from 61 percent in 2001 to 66 percent in 2002 and 71 percent this year. For the bombers deployed in support of Gulf War II, the rate was even better—79 percent. (The B–2 and B–52 bombers supporting OIF posted MC rates of 85 percent and 77 percent, respectively).

This marks a dramatic turnaround. In the 1990s, B–1B mission capability typically slogged around 60 percent.

WHEN LINES BLUR

The line between strategic and tactical systems—never as distinct as it may have appeared—forever has been blurred, and the bombers have proved adept at flying ''tactical'' missions (while some fighters have proved equally adept at the ''strategic mission''). Close air support is no longer the exclusive domain of the A–10 tank-killer aircraft. F–117 fighters carried out numerous strategic strikes in Baghdad and elsewhere. Officials point to this jumbling of operational use as a success in the shift to effects-based operations.

At times, B–1s were able to use moving target indicator radars to perform the functions normally reserved for dedicated intelligence-surveillance-reconnaissance (ISR) aircraft—an airpower first, according to U.S. Central Command.

Each bomber in the Air Force fleet now is capable of delivering JDAMs, which offer targeting flexibility. The JDAM cannot only hit fixed targets with near-precision accuracy in all weather conditions but also be quickly programmed to attack a fleeting ''emerging target.'' One strike against Iraq's Republican Guard Medina Division required a B–2 to reprogram its JDAMs, en route to the target, to take advantage of new intelligence coming in from a Global Hawk unmanned aerial vehicle.

Toward the end of major combat, a B–1B orbiting above western Iraq showed the value of the Air Force's heavy bombers in a new way. Intelligence sources on the ground got a tip on the location of former Iraqi dictator Saddam Hussein. The information was beamed to a B–1B circling in the area. Just 12 minutes later, the target lay in ruins, though Saddam may have gotten out shortly before the roof fell in. After dashing to Baghdad and programming in the coordinates, the B–1B had precisely dropped four 2,000-pound JDAMs where Saddam was thought to be.

In addition to deploying 11 B–1Bs, Air Force leaders reported they sent to war four B–2s and 28 B–52s. These 43 aircraft flew a total of 505 sorties between March 20 and April 18, but, as was true in the Afghan war, the bombers' impact was out of all proportion to their numbers. One official noted that at third of all the aim points struck in Iraq were hit by that small bomber force.

Jumper made special note of the bomber impact in the now famous sandstorm that struck Iraq March 25. ''You couldn't see your hand in front of your face,'' he said, and war commentators began to ponder the significance of the ''pause'' in the war.

''While the commentators were rattling on,'' said Jumper, USAF's bombers and other aircraft were at work. With the Air Force's ISR systems able to see through the sand, and GPS-guided weapons unhindered by the weather, ''B–1s and B–52s were up there pounding the heck out of [the Medina Division],'' Jumper said. ''I'd like to ask the commander of the Medina Division when he thought the pause was.''

''AMAZING'' POWERS

Gen. T. Michael Moseley, who led the allied air war, had another anecdote on the effectiveness of long-range systems. From the United States, a B–2 stealth bomber for the first time delivered 80 500-pound bombs in a single run.

Moseley said the ability to fly from Whiteman AFB, Mo., and drop those 80 weapons against an Iraqi troop concentration was ''an amazing capability to bring the [commander's] quiver.''

The success of the bombers in Iraq and Afghanistan has not dramatically changed the Air Force's plans for the aircraft. Because the Air Force has used only a small number of bombers in recent wars, USAF planners still say the existing bomber inventory will be adequate until around 2038. Also helpful is the fact that only one bomber was lost in the two major combat operations. In December 2001, a B–1B, doomed by numerous onboard failures, crashed in the Indian Ocean on its way to Afghanistan.

The Air Force believes an inventory of 60 B–1Bs (36 combat coded); 21 B–2s (16 combat coded); and 76 B–52s (44 combat coded) will suffice.

''About 150 bombers is the right number,'' said Brig. Gen. Stephen M. Goldfein, USAF's director of operational capability requirements. There has been ''no sea change in the number of bombers required,'' because of recent experience, Goldfein said. The Air Force's inventory plan ''includes some reserve,'' he added, but the preferred number remains stable.

In recent years, lawmakers have often disagreed and pushed for larger numbers of bombers. There have been several unsuccessful attempts to restart B–2 production, with proponents saying the aircraft could be produced much less expensively now that the research and development expenses are already paid.

Citing the lack of any new bomber production, Congress for years has been successful in forcing the Air Force to maintain 18 attrition reserve B–52s that the service considers surplus. A total of 94 B–52Hs remain in service, although only 44 are considered primary mission aircraft.

Congress, led by North Dakota lawmakers, has added funds needed to keep 18 BUFFs at Minot AFB, N.D., configured exactly the same as the rest of the B–52 fleet. Goldfein noted that, despite the service's interest in retiring the 18 aircraft, doing to wouldn't save the Air Force any money. Congress pays the bill, so the savings would be for the taxpayers.

Congress also may force the Air Force to restore some or all of its recently retired B–1Bs. By late summer, three of the four Congressional defense oversight committees had passed legislation mandating that 23 of the 32 deactivated Bones be restored to service.

In the bills, lawmakers offered the $20.3 million needed to bring the B–1s back from the boneyard—but not the much larger amount required to keep the B–1Bs in service. Officials say this unfunded mandate threatens to undo the progress the Air Force has made improving the health of the B–1B fleet.

It would likely cost somewhere between $1.1 billion and $2 billion to keep those aircraft in service through the end of the decade. That funding ''has to come from somewhere,'' Goldfein noted.

The existing arrangement of consolidating the B–1Bs at Ellsworth AFB, S.D., and Dyess AFB, Tex., has enabled the increased mission capable rates through simplified maintenance and parts requirements. Fully funding the smaller fleet's modernization plans brought on a ''host of improvements,'' Goldfein added.

INCREMENTAL UPGRADES

With no new bomber production on the books, and old debates over restarting B–2

production or pursuing an FB–22 variant of the F/A–22 Raptor seemingly on the back burner, the current emphasis is on incremental upgrades. Numerous programs to improve bomber effectiveness are ongoing.

Situational awareness improvements, the Link 16 data link, laser targeting pods, and computer enhancements will continue to make each bomber a more efficient war machine. And upcoming weapons such as the Joint Air-to-Surface Standoff Missile and the Small Diameter Bomb will further broaden the range and number of targets bombers can precisely attack.

ACC officials say that, at this point, almost every improvement serves a dual purpose. Upgrades are expected to both sustain and modernize. Sustainment doesn't just mean keeping the aircraft aloft, either—the aircraft must remain valuable fighting machines. ''We're looking at 2040,'' one B–52 official said. ''Unless we can come to the war, they won't need us.''

The Air Force is trying to get additional targeting pods on its B–52s, Deptula said. ''We're looking at using [Fiscal 2003 and 2004 funds] to get as many targeting pods as we can,'' by using money set aside for the war on terrorism.

Goldfein said the service is interested in increasing the availability of the B–2's deployable shelters. Because of the sensitive low observable finish on the B–2, the bomber must be maintained in a climate-controlled shelter. Deployable shelters, reportedly set up at the Indian Ocean atoll of Diego Garcia, increased the flexibility of the B–2 for Gulf War II. The Air Force is ''looking to expand'' their use, Goldfein said.

As Air Force officials tell it, existing bombers will continue to get better and there is no urgent need to field a new system. Recapitalization is ''a huge piece'' of force structure planning, Deptula said, but USAF has some time to make proper assessments and make wise decisions.

The old way of procurement—planning a new system to replace an old one—''isn't completely gone.'' Deptula said, ''but the fact of the matter is, with respect to the long-range strike platforms formerly known as bombers, their lifetime is viable for many, many years into the future.''

The Air Force does not expect to see a dramatic technological breakthrough anytime soon. However Deptula believes that hypersonics research now being done at Air Force Research Laboratory may hold the key to breakthrough strike capabilities in the future.

TRANSITION PERIOD

''We are in a transition period . . . when it comes to technologies for long-range strike,'' he said. Reusable hypersonic propulsion has been difficult to develop, he noted, but it remains worth the effort because the technology offers revolutionary responsiveness, reach, and range. ''We're not there yet,'' Deptula noted.

Improvements to existing systems are expected to bridge the gap until scientists ''solve some of these technological challenges that will get us to the next step in potential capability,'' he said.

In Deptula's view, the break-through will not come until sometime in the next decade. That timing seems to mesh cleanly with financial realities.

''Our legacy platforms are viable through 2025,'' said Deptula, ''and when we enhance them with all these modifications, they are going to continue to increase in capability.'' It's a nice fit, he went on, because major funding for future long-range systems probably won't be available ''until the 2010–2020 time frame, because we have such a pressing need to recapitalize our fighter force in the next decade.''

The Air Force is holding to its November 2001 bomber roadmap, which laid out a notional plan to begin a new long-range strike program sometime around 2012–15. Officials say there is no need to rush into a new strike program, because USAF would spend billions developing a system that may not be significantly better than what is available today.

Features such as stealth, high speed, long loiter time, large payload capacity, and flexibility are well-understood goals for any future strike capability. However, there is great uncertainty. Officials are loath to say a follow-on system will be a ''B–3'' or even a bomber.

Industry, think tanks, and Air Force officials are all studying what is within the ''art of the possible,'' and USAF wants to keep the broadest possible range of options on the table. These options include traditional bombers, unmanned systems, hypersonic airspace vehicles, conventionally armed ballistic missiles, and even space-based weapons. Current time-lines give the Air Force a decade to explore the options.

ACC's Long-Range Global Precision Engagement Study—a look at future strike requirements—noted that the US is pushing for a capability to conduct high-speed strikes against emerging targets anywhere in the world on short notice. However, it has limited options in this area. Conventional ballistic attack missiles, derived from the nation's nuclear ICBM force, ''offer increased strike flexibility,'' but the financial and political cost would be high, the report noted.

Another area for improvement concerns stealth. The B–2 bomber's low peacetime MC rates stem from the high-maintenance nature of its low observable coatings. The aircraft is also largely relegated to nighttime use in high-threat environments. Yet the B–2 remains the only stealthy strike system largely unhindered by distance or basing concerns.

In the future, the F/A–22 and F–35 fighters will offer around-the-clock stealthy strike capability, noted the study, but the B–2 will continue to be the only stealthy, deep strike penetrator for the foreseeable future. The F/A–22 and F–35 have more limited combat ranges.

The study did not advocate a specific course. However, it did highlight the importance of speed. The advent of hypersonic weapons and platforms would permit ''prompt global strike from significant ranges and reduce the risks associated with forward basing,'' the report noted. Compared to ballistic missiles and cruise missiles, it went on, reusable platforms have high utility ''in all lesser threat scenarios, enhancing their cost-effectiveness across the spectrum of conflict.''

ADDITIONAL STATEMENTS

TRIBUTE TO MARGARET ANN HOFFMAN

● Mr. BUNNING. Mr. President, I pay tribute to Margaret Ann Hoffman of Walton, KY on being recognized as one of America's top principals in the 2003 National Distinguished Principal Program by the U.S. Department of Education.

The annual National Distinguished Principals Program was established in 1984 to honor elementary and middle school principals who set high standards for the pace, character, and quality of the education their students receive.

Ms. Hoffman, a principal at Fort Wright Elementary School, in Covington, KY, has been recognized by the U.S. Department of Education for her tireless work in exhibiting excellence at Fort Wright Elementary School and has made outstanding contributions to the Covington community. Ms. Hoffman sets an example of excellence for the rest of the faculty, and the faculty follows that example. She inspires her students to achieve academically and contribute to the community.

I know ask my fellow colleagues to join me in thanking Margaret Ann Hoffman for her dedication and commitment to the education of America's future. In order for our society to continue to advance in the right direction, we must have principals like Margaret Ann Hoffman in our schools, and communities, and lives. She is Kentucky at its finest.●

IN HONOR OF MIKE ELWOOD

● Mr. WYDEN. Mr. President, I rise today to acknowledge and honor a very important constituent, as well as a very important program in my State and across the Nation—CASA for Children. ''CASA'' is short for Court Appointed Special Advocate, and it is a program that is made up of extraordinary men and women who find it in their hearts to devote their time and energy to help some of the neediest of their community's children. CASAs come from all walks of life, all professions, and all educational and ethnic backgrounds, and their mission is to advocate for the best interests of children who find themselves, through no fault of their own, under the jurisdiction of the juvenile court system.

As we see all too often in public service, far too many children find themselves enmeshed in the juvenile court system due to abuse, neglect or abandonment. Once in the court system, these kids can find themselves cruelly buffeted by legal battles and their parents' continuing poor choices. Some find themselves in multiple foster care situations at a very young age, and many are eventually permanently removed from the care of their birth parents. CASAs serve their communities by becoming an independent advocate for a child as a sworn officer of the court. They spend time with health professionals, teachers, parents, prospective parents, and the children themselves to help the court reach the best possible conclusion for the interests of the child.

CASA came to Oregon in 1985 under the leadership of Judge Stephen Herrell and citizen advocate, Susan Holloway. For Almost 20 years, CASA has trained Oregon volunteers to be the eyes and ears of the court, making independent objective recommendations regarding the best interests of children.

In Oregon, we have a CASA leader who personally exemplifies the very best of my State in his legacy of commitment to the future of Oregon's children. Mike Elwood, who has been both

a CASA volunteer and a CASA supervisor in Portland, has served variously as a counselor, advisor, and friend to many of my State. Mike once served as a caseworker in the child welfare system, but later came to CASA because he believed it would be the place where he could make the biggest difference.

Today, Mike suffers from a terminal illness. The CASA organization and all of Oregon has been extraordinary fortunate to have him in their ranks. Mike's co-workers describe him as compassionate, funny, possessing a quiet wisdom, able to interject just the right solution when it appears to elude everyone else, and an inherently decent guy. One CASA represented the feelings of a great many in the organization, saying, ''I for one feel blessed to have him in my life. He is the best.''

I want to take this opportunity to honor Mike's contributions to my State, to the Nation, and to humanity, and to wish Mike, his wife Natalie, and his two children, Ryan and Andrea, peace and joy in the days ahead. I have witnessed first-hand the ripples that emanate from simply human acts, good and bad. These ripples can reach across families, across borders, and across generations. Mike's ripples have made this world a far better place. I honor his dedicated service and his life, as well as the service rendered by CASA workers and volunteers all across our Nation.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 10:58 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1829. An act to amend title 18, United States Code, to require Federal Prison Industries to compete for its contracts minimizing its unfair competition with private sector firms and their non-inmate workers and empowering Federal agencies to get the best value for taxpayers' dollars, to provide a five-year period during which Federal Prison Industries adjusts to obtaining inmate work opportunities through other than its mandatory source status, to enhance inmate access to remedial and vocational opportunities and other rehabilitative opportunities to better prepare inmates for a successful return to society, to authorize alternative inmate work opportunities in support of non-profit organizations, and for other purposes.

ENROLLED BILLS SIGNED

The following enrolled bills, previously signed by the Speaker, were signed on today, November 7, 2003, by the President pro tempore (Mr. STEVENS).

H.R. 1442. An act to authorize the design and construction of a visitor center for the Vietnam Veterans Memorial.

H.R. 3365. An act to amend title 10, United States Code, and the Internal Revenue Code of 1986 to increase the death gratuity payable with respect to deceased members of the Armed Forces and to exclude such gratuity from gross income, to provide additional tax relief for members of the Armed Forces and their families, and for other purposes.

ENROLLED JOINT RESOLUTION SIGNED

At 11:40 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following joint resolution:

H.J. Res. 76. A joint resolution making further continuing appropriations for the fiscal year 2004, and for other purposes.

The joint resolution was signed subsequently by the President pro tempore (Mr. STEVENS).

At 12:45 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1588) ''to authorize appropriations for fiscal year 2004 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 Forces, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1829. An act to amend title 18, United States Code, to require Federal Prison Industries to compete for its contracts minimizing its unfair competition with private sector firms and their non-inmate workers and empowering Federal agencies to get the best value for taxpayers' dollars, to provide a five-year period during which Federal Prison Industries adjusts to obtaining inmate work opportunities through other than its mandatory source status, to enhance inmate access to remedial and vocational opportunities and other rehabilitative opportunities to better prepare inmates for a successful return to society, to authorize inmate work opportunities in support of non-profit organizations, and for other purposes; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

S. 1832. A bill to entitle the Senator Paul Wellstone Mental Health Equitable Treatment Act of 2003.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5183. A communication from the Secretary of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC–5184. A communication from the Secretary of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC–5185. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the Department's Alternate Fuel Vehicle Program; to the Committee on Energy and Natural Resources.

EC–5186. A communication from the, transmitting, pursuant to law, the report of a rule entitled ''Assessment of Access Authorization Fees'' (RIN3150–AH30) received on November 4, 2003; to the Committee on Environment and Public Works.

EC–5187. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clean Air Act Final Approval of Operating Program Revision; Michigan'' (FRL#7585–3) received on November 4, 2003; to the Committee on Environment and Public Works.

EC–5188. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Prevention of Significant Deterioration (PSD) and Non-attainment New Source Review (NSR): Reconsideration'' (FRL#7583–7) received on November 4, 2003; to the Committee on Environment and Public Works.

EC–5189. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Trade Secrecy Claims for Emergency Planning and Community Right-to-Know Information; and Trade Secret Disclosures to Health Professionals; Amendment'' (FRL#7584–8) received on November 4, 2003; to the Committee on Environment and Public Works.

EC–5190. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Water Quality Standards; Withdrawal of Federal Aquatic Life Water Quality Criteria for Copper and Nickel Applicable to South San Francisco Bay, California'' (FRL#7583–9) received on November 4, 2003; to the Committee on Environment and Public Works.

EC–5191. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Water Quality Standards; Withdrawal of Federal Nutrient Standards for the State of Arizona'' (FRL#7584–1) received on November 4, 2003; to the Committee on Environment and Public Works.

EC–5192. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the

Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles that are firearms sold commercially under a contract in the amount of $1,000,000 or more to Belgium; to the Committee on Foreign Relations.

EC–5193. A communication from the General Counsel, Office of Justice Programs, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Common Rule on Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants)'' (RIN1121–AA57) received on November 5, 2003; to the Committee on the Judiciary.

EC–5194. A communication from the Assistant Chief for Regulations, Alcohol and Tobacco Tax and Trade Bureau, Treasury Department, transmitting, pursuant to law, the report of a rule entitled ''Bennett Valley Viticultural Area'' (RIN1513–AA36) received on November 5, 2003; to the Committee on the Judiciary.

EC–5195. A communication from the Deputy General Counsel, Small Business Administration, New Market, transmitting, pursuant to law, the report of a rule entitled ''New Market Venture Capital Program'' (RIN3245–AE91) received on October 30, 2003; to the Committee on Small Business and Entrepreneurship.

EC–5196. A communication from the Deputy General Counsel, Small Business Administration, New Market, transmitting, pursuant to law, the report of a rule entitled ''Business Loans and Development Company Loans'' (RIN3245–AE68) received on October 30, 2003; to the Committee on Small Business and Entrepreneurship.

EC–5197. A communication from the Deputy General Counsel, Small Business Administration, New Market, transmitting, pursuant to law, the report of a rule entitled ''Disaster Loan Program—Disaster Mitigation Act of 2000'' (RIN3245–AE97) received on October 30, 2003; to the Committee on Small Business and Entrepreneurship.

EC–5198. A communication from the Director, Regulations Management, Veterans Benefits Administration, transmitting, pursuant to law, the report of a rule entitled ''Veterans Education: Indecent Study Approved for Certificate Programs and Other Miscellaneous Issues'' (RIN2900–AL34) received on October 30, 2003; to the Committee on Veterans' Affairs.

EC–5199. A communication from the Director, Regulations Management, Veterans Benefits Administration, transmitting, pursuant to law, the report of a rule entitled ''Disease Associated with Exposure to Certain Herbicide Agents: Chronic Lymphocytic Leukemia'' (RIN2900–AL55) received on October 30, 2003 ; to the Committee on Veterans' Affairs.

EC–5200. A communication from the National President, Women's Army Corps Veterans' Association, transmitting, pursuant to law, the annual audit of the Association; to the Committee on Veterans' Affairs.

EC–5201. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations [Including 245 Regulations]'' (RIN1625–AA00) received on November 5, 2003; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary:

Report to accompany S.J. Res. 1, A joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims (Rept. No. 108–191).

By Mr. GRASSLEY, from the Committee on Finance, with an amendment in the nature of a substitute:

S. 1637. A bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes (Rept. No. 108–192).

By Mr. LUGAR, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Res. 237. A resolution welcoming the public apologies issued by the President of Serbia and Montenegro and the President of the Republic of Croatia and urging other leaders in the region to perform similar concrete acts of reconciliation.

By Mr. LUGAR, from the Committee on Foreign Relations, without amendment:

S. Res. 256. A resolution observing the 50th anniversary of the Mutual Defense Treaty between the United States and the Republic of Korea, affirming the deep cooperation and friendship between the people of the United States and the people of the Republic of Korea, and thanking the Republic of Korea for it's contributions to the global war on terrorism and to the stabilization and reconstruction of Afghanistan and Iraq.

By Mr. LUGAR, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Res. 258. A resolution expressing the sense of the Senate on the arrest of Mikhail B. Khodorkovsky by the Russian Federation.

By Mr. LUGAR, from the Committee on Foreign Relations, without amendment:

S. 1317. A bill to amend the American Servicemember's Protection Act of 2002 to provide clarification with respect to the eligibility of certain countries for United States military assistance.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By M. LUGAR for the Committee on Foreign Relations:

*Edward B. O'Donnell, Jr., of Tennessee, a Career Member of the Senior Foreign Service, Class of Counselor, for the rank of Ambassador during his tenure of service as Special Envoy for Holocaust Issues.

*Jon R. Purnell, of Massachusetts, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Uzbekistan.

*Margaret DeBardeleben Tutwiler, of Alabama, to be Under Secretary of State for Public Diplomacy.

*Zalmay Khalilzad, of Maryland, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Transitional Islamic State of Afghanistan.

*Louise V. Oliver, of the District of Columbia, for the rank of Ambassador during her tenure of service as the United States Permanent Representative to the United Nations Educational, Scientific, and Cultural Organization.

*William J. Hudson, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Tunisia.

*Margaret Scobey, of Tennessee, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Syrian Arab Republic.

*Thomas Thomas Riley, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Morocco.

*Jackie Wolcott Sanders, for the rank of Ambassador during her tenure of service as United States Representative to the Conference on Disarmament and the Special Representative of the President of the United States for Non-Proliferation of Nuclear Weapons.

*Mary Kramer, of Iowa, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Barbados and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to St. Kitts and Nevis, Saint Lucia, Antigua and Barbuda, the Commonwealth of Dominica, Grenada, and Saint Vincent and the Grenadines.

*Timothy John Dunn, of Illinois, a Career Member of the Senior Foreign Service, Class of Counselor, for the rank of Ambassador during his tenure of service as Deputy Permanent Representative to the Organization of American States.

*James Curtis Struble, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America of America to the Republic of Peru.

*Hector E. Morales, of Texas, to be United States Alternate Executive Director of the Inter-American Development Bank.

*Marguerita Dianne Ragsdale, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Djibouti.

*Stuart W. Holliday, of Texas, to be Alternate Representative of the United States of America for Special Political Affairs in the United Nations, with the rank of Ambassador.

Mr. LUGAR. Mr. President, for the Committee on Foreign Relations I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

*Foreign Service nominations beginning Elena L. Brineman and ending Stephen J. Hadley, which nominations were received by the Senate and appeared in the Congressional Record on October 3, 2003.

*Foreign Service nominations beginning Kenneth C. Brill and ending Steven C. Taylor, which nominations were received by the Senate and appeared in the Congressional Record on October 3, 2003.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before and duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SMITH:

S. 1839. A bill to extend the Temporary Extended Unemployment Compensation Act of 2002; to the Committee on Finance.

By Mr. CONRAD (for himself, Mr. ROBERTS, Mr. DASCHLE, Mr. DAYTON, Mr. DORGAN, Mr. JOHNSON, Mr. BAUCUS, Mr. ENZI, Mr. KERRY, Mr. HARKIN, Mr. COLEMAN, Mr. REID, and Mr. NELSON of Nebraska):

S. 1840. A bill to amend the Food Security Act of 1985 to encourage owners and operators of privately-held farm and ranch land to voluntarily make their land available for access by the public under programs administered by States; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. GRASSLEY:

S. Res. 263. A resolution honoring the men and women of the Drug Enforcement Administration on the occasion of it's 30th Anniversary; to the Committee on the Judiciary.

By Mrs. FEINSTEIN (for herself, Mr. BROWNBACK, Mr. NELSON of Florida, Mrs. HUTCHISON, Mr. BINGAMAN, Mr. DOMENICI, Mr. KYL, Mr. CAMPBELL, and Mr. HATCH):

S. Con. Res. 79. A concurrent resolution expressing the sense of Congress that the President should secure the sovereign right of the United States of America and the States to prosecute and punish, according to the laws of the United States and the several States, crimes committed in the United States by individuals who subsequently flee to Mexico to escape prosecution; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 861

At the request of Mr. HOLLINGS, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 861, a bill to authorize the acquisition of interests in undeveloped coastal areas in order to better ensure their protection from development.

S. 1053

At the request of Ms. SNOWE, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from Iowa (Mr. HARKIN) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 1053, a bill to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

S. 1211

At the request of Mr. BINGAMAN, his name was added as a cosponsor of S. 1211, a bill to further the purposes of title XVI of the Reclamation Projects Authorization and Adjustment Act of 1992, the ''Reclamation Wastewater and Groundwater Study and Facilities Act'', by directing the Secretary of the Interior to undertake a demonstration program for water reclamation in the Tularosa Basin of New Mexico, and for other purposes.

S. 1246

At the request of Mr. ROBERTS, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 1246, a bill to amend the Internal Revenue Code of 1986 to provide for collegiate housing and infrastructure grants.

S. 1379

At the request of Mr. JOHNSON, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1379, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 1419

At the request of Ms. LANDRIEU, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1419, a bill to support the establishment or expansion and operation of programs using a network of public and private community entities to provide mentoring for children in foster care.

S. 1510

At the request of Mr. LEAHY, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1510, a bill to amend the Immigration and Nationality Act to provide a mechanism for United States citizens and lawful permanent residents to sponsor their permanent partners for residence in the United States, and for other purposes.

S. CON. RES. 73

At the request of Mrs. FEINSTEIN, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. Con. Res. 73, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

S. RES. 262

At the request of Ms. SNOWE, the names of the Senator from New York (Mr. SCHUMER) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. Res. 262, a resolution to encourage the Secretary of the Treasury to initiate expedited negotiations with the People's Republic of China on establishing a market-based currency valuation and to fulfill its commitments under international trade agreements.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CONRAD (for himself, Mr. ROBERTS, Mr. DASCHLE, Mr. DAYTON, Mr. DORGAN, Mr. JOHNSON, Mr. BAUCUS, Mr. ENZI, Mr. KERRY, Mr. HARKIN, Mr. COLEMAN, Mr. REID, and Mr. NELSON of Nebraska):

S. 1840. A bill to amend the Food Security Act of 1985 to encourage owners and operations of privately-held farm and ranch land to voluntarily make their land available for access by the public under programs administered by States; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. CONRAD. Mr. President, today I am joined by Senators ROBERTS, DASCHLE, DAYTON, DORGAN, JOHNSON, BAUCUS, ENZI, KERRY, HARKIN, COLEMAN, REID, and NELSON of Nebraska in introducing the ''Voluntary Public Access and Habitat Incentive Program of 2003''.

Newspaper headlines across North Dakota over the past year confirm that one issue has emerged as among the most controversial that we have seen in the State in some time. That issue has to do with who can hunt in North Dakota, and under what conditions.

As one State senator said during the 2003 session of the North Dakota legislature: ''In all my years in the legislature, I haven't gotten so many calls as [on] this one.''

Some have called for stricter limits on the number of out-of-state sportsmen in order to provide greater hunting opportunities for North Dakota citizens. On the other side, many of the rural businesses in North Dakota whose livelihoods have come to depend increasingly on the dollars spent by non-resident hunters have urged a less restrictive policy.

An article earlier this year in a North Dakota paper began with the declaration that, ''No bill has stirred more passion in people than Senate Bill 2048, which deals with capping the number of out-of-state hunters.'' One State legislator termed the debate over the bill, ''civil war between residents of North Dakota fighting over hunting ground.''

At its core, the hunting debate is about demand exceeding supply. Quite simply, the public desire for hunting and other outdoor recreation opportunities increasingly exceeds the amount of land available for such activities. And the problem is growing worse each year. Other States face a similar challenge, and they too are in a quandary as they seek to address it.

In response to this growing problem, I have been working with a number of my colleagues—as well as farm, conservation, and sportsmen's groups—to develop a positive, straightforward, voluntary and incentive-based approach to addressing the ''supply side'' of this issue. And I am pleased to be introducing that initiative today.

Our proposal is a voluntary landowner incentive program. Its formal title is the ''Voluntary Public Access and Habitat Incentive Program of 2003''. As the title indicates, it is strictly voluntary in nature.

It would work like this: Under the program—which I to refer to as the

''Open Fields'' proposal, the U.S. Department of Agriculture would provide $50 million per year to State programs that offer incentive payments to farmers and ranchers who agree to allow public access on their land, under terms established by each state.

The ''Open Fields'' program would be funded in the same way that Federal farm and conservation programs are currently financed—through USDA's Commodity Credit Corporation. To receive funding under the program, interested states would describe the benefits that the state hopes to achieve by encouraging public access on private farm and ranch land—through such activities as hunting, fishing, birding, and related outdoor activities—and the methods that the State will use to achieve those benefits.

In determining the distribution of funds under the program, USDA would give priority to those States that propose—1. to maximize participation by offering a program whose terms are likely to meet with widespread acceptance among landowners in the state; 2. to ensure that land enrolled under the state program has appropriate wildlife habitat; 3. to increase public access on land enrolled in habitat improvement projects under the Conservation Reserve Enhancement Program; and 4. to use other Federal, state or private resources, in a collaborative way, to carry out the program.

But participation by the States and individual land owners in each State would, as I have indicated, be completely voluntary.

In designing the ''Open Fields'' program, our aim has been to build on what works—to grease the wheel, rather than re-invent it. For example, about 13 States already have programs designed to increase the amount of private land available to the public, but these programs are generally modest in scope and suffer from limited funding. Our legislation is designed to give these struggling State programs a needed shot in the arm and to encourage other States.

In North Dakota, for example, we have the Private Land Initiative, under which revenue generated from the sale of habitat stamps is used to provide cost-share assistance for wildlife habitat, and to support the Conservation PLOTS program—PLOTS stands for ''Private Land Open To Sportsmen.'' Under this program, owners agree to make their land accessible to the public in return for cost-share and incentive payments. Earlier this year, State officials made an additional $1.5 million available to increase public access on private land, in an effort to help diffuse tensions in the debate over resident versus non-resident hunters.

Other States have similar programs. Kansas, for example, has its ''Walk-In Hunting'' program. Montana has a ''Block Management, Public Access/Private Land'' program. Nebraska sponsors a Conservation Reserve Program/Management Access Program, under which landowners with CRP ground receive a bonus payment if they take steps to improve habitat and allow public access on their CRP land. Colorado recently implemented its ''Walk-In Access'' program, under which interested hunters purchase a $20 stamp that gives them access to private land enrolled in the program and a directory of participating landowners.

All of these are fine, innovative programs, but they lack the resources needed to meet the public's growing demand for places to hunt and engage in other forms of outdoor recreation.

Make no mistake about it, wildlife-related recreation is a major force in defining our national character and in shaping our economy. For example, according to the U.S. Fish and Wildlife Service, in 2001, 82 million Americans age 16 years and older participated in wildlife-related recreation. During that year, over 34 million people fished, 13 million hunted, and over 66 million participated in at least one type of wildlife-watching activity such as observing, feeding, or photographing wildlife in the United States.

According to the Fish & Wildlife Service, those 82 million people who engaged in wildlife-related activities spent an estimated $108 billion, including over $35 billion on fishing and nearly $21 billion on hunting. That's big business by any definition, and it is a slice of the national economy that is increasingly important to our rural communities and small businesses. In 2001 alone, for example, $20 billion was spent on food, lodging, and transportation by those who hunted and fished, while wildlife-watching participants, including birders, spent another $8.2 billion on those same items.

In North Dakota, wildlife-related recreation generated nearly $1 billion for the State's economy during the 2001–2002 season, according to the North Dakota Game and Fish Commission. The Commission estimates that direct spending by hunters and anglers laws $469 million during the season, generating nearly $545 million in additional economic activity. North Dakota ranks second in the Nation in terms of the percentage of the State's resident's who hunt, 19 percent, and fifth among States in the percentage of State residents who fish, 29 percent.

To underscore the importance of non-resident hunters to my State, the Fish and Wildlife Service estimates that North Dakota ranks third among States in the percentage of hunters in the State who are non-residents. The estimated 52,000 non-resident hunters in our State make up an estimated 37 percent of all hunters. Only South Dakota, 65 percent, and Colorado, 43 percent, rank higher.

In addition, there is ample evidence, from North Dakota State University and individual business owners, that the wildlife and hunting opportunities created by the Conservation Reserve Program have helped to cushion the economic impact first created when the CRP withdrew land from production and caused farmers to purchase fewer inputs and other services so important to our struggling rural communities. So it is critically important that we look for additional means to increase sporting opportunities for the public, and do so in a way that not only allows traditional farming operations to continue, but also increases a farm's income-earning potential. Our proposal would do just that.

All in all, this program will be good for farm income, good for conservation, good for our struggling rural communities, and a positive force in strengthening the bond between producers and the general public.

Finally, there are also broader policy reasons to move in this direction. For example, it is likely that future world trade agreements are increasingly going to limit the ability of the United States and other major agricultural producing countries to support our farmers in a way that is considered to be trade, or market, ''distorting.'' In other words, U.S. policymakers are likely to find it more and more difficult to provide government farm support in a way that is tied either to production or prices. Instead, we will have to find so-called ''green box'' means of supporting farm income—payments that are not based on bushels produced or current commodity prices. That's clearly the direction that the European Union is taking, and we had better take notice. The program we are announcing today fits neatly in the current green box definition, and should be one of the many tools available to support farm income well into the future, even if new trade agreements constrain our farm policy options.

I am pleased that our legislation has already received the support of a number of farm, sportsmen, and conservation organizations, including the North Dakota Farmers Union, the North Dakota Farm Bureau, the National Farmers Union, the Theodore Roosevelt Conservation Partnership, the Wildlife Management Institute, the Izaak Walton League of America, the International Association of Fish and Wildlife Agencies, the Congressional Sportsmen's Foundation, the National Rifle Association, the Mule Deer Foundation, Pheasants Forever, the American Sportfishing Association, Pure Fishing, Trout Unlimited, Bass Anglers Sportsmen Society, the Ruffed Grouse Society, the Wildlife Society, the Pope and Young Club, the Federal of Flyfishers, the International Hunter Education Association, the Boone and Crocket Club, the Sporting Goods Manufacturers Association, the National Shooting Sports Foundation, the North American Grouse Partnership, the Texas Wildlife Association, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada.

In closing, let me quote from one of news articles that appeared in a North Dakota paper last year.

Commenting on the controversy over the proposed change in the pheasant season opening date, the Bismark Tribune editorialized that, ''On one extreme are landowners catering to out-of-state hunters, in part, because of weak and declining rural economies. For them, this is a matter of survival. On the other hand, many sportsmen feel that the growing numbers of acres dedicated to out-of-state hunters, willing to pay big bucks to hunt, are destroying the sport for the state's residents . . . The two sides are a long, long way apart.''

My hope is that we can find ways to bring people together, and in the process strengthen our rural economy, encourage conservation, and preserve our hunting traditions for generations to come. And that's what this proposal is all about.

I ask unanimous consent that additional material be printed in the RECORD.

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

NOVEMBER 6, 2003.

Hon. KENT CONRAD,
Hon. PAT ROBERTS.

DEAR SENATORS: We are writing to express our support for the Voluntary Public Access and Habitat Incentive Program Act of 2003, your legislation to establish state-administered, voluntary, incentive-based programs to expand public access to private lands.

In an era when more and more hunters and anglers are faced with ''no trespassing'' signs and more land is being converted to commercial hunting and fishing operations, this legislation is critically needed to expand access to places to hunt and fish.

This summer, Field and Stream magazine published the results of its 2003 National Hunting Survey. Based on that survey, Field an Stream concluded that a major reason for the decline of hunting in America is the lack of available habitat and access to that habitat. As representatives of outdoor enthusiasts that would benefit from greater access to private lands, we applaud your efforts to enact this new voluntary, incentive-based program. We estimate that your legislation, if fully funded, would encourage landowners to open up more than 10 million new acres of private land to the public each year, dramatically enhancing the experiences of hunters and anglers as well as bird watchers, hikers, and others who enjoy the outdoors.

A number of states already have established programs to work cooperatively with private landowners to pay for access to their lands. Kansas, South Dakota, North Dakota, Wyoming, Montana, and Nebraska all have very successful programs that open millions of acres of lands to the public each year, and several other states are initiating similar programs. These programs are popular with hunters and anglers as well as private landowners. In fact, due to a lack of financial resources, many states are unable to take advantage of the offers by private landowners to enroll in their access programs. By supplementing state resources that currently are being dedicated to this purpose, your legislation will provide additional income to ranchers and farmers, while expanding opportunities to hunters and anglers.

We look forward to working with you to enact this legislation as expeditiously as possible.

Sincerely,

Theodore Roosevelt Conservation Partnership.
Wildlife Management Institute.
Izaak Walton League of America.
International Association of Fish and Wildlife Agencies.
Congressional Sportsmen's Foundation.
National Rifle Association.
Mule Deer Foundation.
Pheasants Forever.
American Sportfishing Association.
Pure Fishing.
Trout Unlimited.
Bass Anglers Sportsmen Society.
Ruffed Grouse Society.
The Wildlife Society.
Trout Unlimited.
Pope & Young Club.
Federation of Flyfishers.
The International Hunter Education Association.
Boone and Crockett Club.
Sporting Goods Manufacturers Association.
National Shooting Sports Foundation.
North American Grouse Partnership.
Texas Wildlife Association.
United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada.

NATIONAL FARMERS UNION,
November 6, 2003.

Hon. KENT CONRAD,
Ranking Member, Senate Budget Committee, U.S. Senate, Washington, DC.

DEAR SENATOR CONRAD: On behalf of the 300,000 family farmers and rancher members of the National Farmers Union (NFU), I write in support of your legislation to establish a voluntary incentive program to encourage farmers and ranchers to provide public access for hunting on their property where appropriate wildlife habitat is maintained.

We believe the ''Voluntary Public Access and Habitat Incentive Program Act of 2003'' can act both as an important supplement to existing state programs as well as an appropriate stimulus to create new opportunities in additional states. In addition, this program can help alleviate the potential conflict between landowners and the rapidly growing demand by hunters for increased access to rural lands by expanding the availability of private land where hunting is allowed.

Experience demonstrates that the rural impact of hunting on private lands can be an important contributor to rural economic development and provide a much needed boost to the incomes of farmers and ranchers as well as rural businesses. Your proposed legislation provides a unique opportunity to enhance the potential of hunting activities in our Nation's rural areas while ensuring that producer participation is voluntary and that contract terms are designed to achieve a high level of both local control and landowner acceptance.

We look forward to working with you and your colleagues to achieve passage and implementation of this incentive program.

Sincerely,

DAVID J. FREDERICKSON,
President.

S. 1840

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Voluntary Public Access and Wildlife Habitat Incentive Program Act of 2003''.

SEC. 2. FINDINGS.

Congress finds that—

(1) according to the United States Fish and Wildlife Service, in 2001, 82,000,000 individuals in the United States aged 16 years and older participated in wildlife-related recreation, including 34,000,000 individuals who hunted, and more than 66,000,000 who engaged in wildlife-related recreation such as observing, feeding, or photographing wildlife, in the United States;

(2) individuals who participated in wildlife-related activities in 2001 spent an estimated $108,000,000,000, including—

(A) more than $35,000,000,000 on fishing;

(B) nearly $21,000,000,000 on hunting; and

(C) more than $28,000,000,000 on food, lodging, and transportation;

(3) the growing public demand for outdoor recreational opportunities is increasingly constrained by the limits on both public and private land resources;

(4) limited public access on private land has often frustrated and disappointed hunters and other naturalists, and undermined the relationship between land owners and the general public;

(5) several States have established successful but modest walk-in programs to encourage public access on private farm and ranch land, yet the demand for such voluntary access programs remains largely unfulfilled;

(6) traditional agricultural markets have in recent years offered limited income opportunities for farm and ranch land owners and operators; and

(7) current proposals to reform world agricultural trade favor the development of new methods to support the income of agricultural producers that have minimal impact on agricultural production and prices.

SEC. 3. VOLUNTARY PUBLIC ACCESS AND HABITAT INCENTIVE PROGRAM.

(a) IN GENERAL.—Chapter 5 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3839bb et seq.) is amended by adding at the end the following:

''SEC. 1240Q. VOLUNTARY PUBLIC ACCESS AND HABITAT INCENTIVE PROGRAM.

''(a) IN GENERAL.—The Secretary shall establish a voluntary public access program under which States may apply for grants to encourage owners and operators of privately-held farm and ranch land to voluntarily make that land available for access by the public under programs administered by the States.

''(b) APPLICATIONS.—In submitting applications for a grant under the program, a State shall describe—

''(1) the benefits that the State intends to achieve by encouraging public access on private farm and ranch land, through such activities as hunting, fishing, bird watching, and related outdoor activities; and

''(2) the methods that will be used to achieve those benefits.

''(c) PRIORITY.—In approving applications and awarding grants under the program, the Secretary shall give priority to States that propose—

''(1) to maximize participation by offering a program the terms of which are likely to meet with widespread acceptance among landowners;

''(2) to ensure that land enrolled under the State program has appropriate wildlife habitat;

''(3) to strengthen wildlife habitat improvement efforts on land enrolled in a special conservation reserve enhancement program described in 1234(f)(4) by providing incentives to increase public access on that land; and

''(4) to use additional Federal, State, or private resources in carrying out the program.

''(d) RELATIONSHIP TO OTHER LAWS.—Nothing in this section preempts a State law (including any State liability law).

''(e) REGULATIONS.—The Secretary shall promulgate such regulations as are necessary to carry out this section.''.

(b) FUNDING.—Section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)) is amended by adding at the end the following:

''(8) The voluntary public access program under section 1240Q, using, to the maximum extent practicable, $50,000,000 in each of fiscal years 2003 through 2007.''.

SEC. 4. PREVENTION OF EXCESS BASE ACRES.

Section 1101(g)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7911(g)(2)) is amended by striking subparagraph (C).

SECTION-BY-SECTION SUMMARY—VOLUNTARY PUBLIC ACCESS AND HABITAT INCENTIVE PROGRAM OF 2003

SEC. 1. Title: ''Voluntary Public Access and Habitat Incentive Program of 2003''.

SEC. 2. Findings: Describes—

(1) the importance of wildlife-related recreation of the U.S. economy;

(2) the growing demand for outdoor recreation activities such as hunting, fishing, and wildlife watching;

(3) the increasingly limited opportunities for the public to access private land;

(4) the modest hunter access programs begun in some states; and

(5) the need to identify WTO-compliant means of supporting farm income in the future.

SEC. 3. Establishes the ''Voluntary Public Access and Habitat Incentive Program of 2003'' and provides $50 million in Commodity Credit Corporation funds annually (2003–07) to States for the purpose of encouraging owners and operators of privately-held farm and ranch land to voluntarily make their land available for access by the public under programs administered by the States. Priority for funding under the program is given to those States that propose—

(1) to maximize participation by offering a program whose terms are likely to meet with widespread acceptance among landowners;

(2) to ensure that land enrolled under the State program has appropriate wildlife habitat;

(3) to strengthen wildlife habitat improvement efforts on land enrolled under the Conservation Reserve Enhancement Program; and

(4) to use additional Federal, State, or private resources in carrying out the program.

Clarifies that nothing in the bill preempts a State law (inclosing any State liability law).

SEC. 4. Repeals Sec. 1101(b)(2)(C) of the 2002 Farm Bill, a provision that USDA has interpreted to require that land enrolled under any State conservation program that prohibits the production of a crop be removed from a farm's acreage base for purposes of federal farm program benefits.

Mr. HARKIN. Mr. President, I am pleased to join Senators CONRAD, ROBERTS and others in introducing the Voluntary Public Access and Wildlife Habitat Incentive Program Act of 2003. This bill offers an excellent opportunity to help conserve wildlife habitat, increase the amount of land available for outdoor recreational activities, and help farmers and ranchers.

Hunting and other outdoor activities are very popular and are an important part of our country's heritage. Unfortunately, the shortage of public land in some States limits the ability of people to enjoy these activities. Providing incentives to increase public access to private lands can enhance outdoor recreational opportunities and help rural economies.

In many rural areas businesses associated with wildlife recreation, such as sporting goods stores, campgrounds, and motels and hotels, are an important part of the economy. By increasing the lands available for outdoor recreation, not only will more local residents be able to enjoy this activity, but we will also encourage more people to visit rural areas, bringing additional revenue to these rural communities. When hunting, bird watching or hiking on accessible lands, visitors stay in local lodging, purchase goods in stores and eat in restaurants. The money generated from these activities is good for rural economies.

In many States, such as Iowa, many farmers and landowners have traditionally granted hunters and other outdoor recreationists permission to use their land when asked. This bill will help compensate owners and operators of farm and ranch land for their generosity and also encourage more of them to provide such access to their land. And, of course, this bill will benefit wildlife by encouraging landowners and operators to maintain, increase and improve habitat for wildlife.

In States access programs now operating, information listing enrolled private land is often readily available to allow recreationists to access the land without the need to bother the owners to ask for permission. Many existing programs also have the very important benefit of reducing the liability of landowners and operators in case of injury to people using their land. State programs also help ensure enforcement of hunting and other regulations and help landowners and operators posts signs and information.

Currently at least 13 States have public access programs that would be eligible for funds from this bill. While Iowa currently does not have a program, there is great interest in starting a program, and I believe this bill will enable Iowa to start one. This bill provides flexibility to allow States to design programs to meet the particular needs and interests of landowners and recreationists in each State while at the same time ensuring that the goals of increasing wildlife habitat and available lands for public recreation are met.

I am proud to cosponsor this bill and urge my colleagues to support it.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 263—HONORING THE MEN AND WOMEN OF THE DRUG ENFORCEMENT ADMINISTRATION ON THE OCCASION OF ITS 30TH ANNIVERSARY

Mr. GRASSLEY submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 263

Whereas the Drug Enforcement Administration (DEA) was first created by executive order on July 6, 1973, merging the previously separate law enforcement and intelligence agencies responsible for narcotics control;

Whereas the first Administrator of the DEA, John R. Bartels, Jr., was confirmed by the Senate on October 4, 1973;

Whereas since 1973 the men and women of the DEA have served our Nation with courage, vision and determination, protecting all Americans from the scourge of drug trafficking, abuse, and related violence;

Whereas between 1986 and 2002 alone, DEA agents seized over 10,000 kilograms of heroin, 900,000 kilograms of cocaine, 4,600,000 kilograms of marijuana, 113,000,000 dosage units of hallucinogens, and 1,500,000,000 dosage units of methamphetamine, and made over 443,000 arrests of drug traffickers;

Whereas DEA agents continue to lead task forces of Federal, State, and local law enforcement officials throughout the Nation, in a cooperative effort to stop drug trafficking and put drug gangs behind bars;

Whereas throughout its history many DEA employees and members of DEA task forces have given their lives in the defense of our Nation, including: Emir Benitez, Gerald Sawyer, Leslie S. Grosso, Nickolas Fragos, Mary M. Keehan, Charles H. Mann, Anna Y. Mounger, Anna J. Pope, Martha D. Skeels, Mary P. Sullivan, Larry D. Wallace, Ralph N. Shaw, James T. Lunn, Octavio Gonzalez, Francis J. Miller, Robert C. Lightfoot, Thomas J. Devine, Larry N. Carwell, Marcellus Ward, Enrique S. Camarena, James A. Avant, Charles M. Bassing, Kevin L. Brosch, Susan M. Hoefler, William Ramos, Raymond J. Stastny, Arthur L. Cash, Terry W. McNett, George M. Montoya, Paul S. Seema, Everett E. Hatcher, Rickie C. Finley, Joseph T. Aversa, Wallie Howard, Jr., Eugene T. McCarthy, Alan H. Winn, George D. Althouse, Becky L. Dwojeski, Stephen J. Strehl, Richard E. Fass, Juan C. Vars, Jay W. Seale, Meredith Thompson, Frank S. Wallace, Jr., Frank Fernandez, Jr., Kenneth G. McCullough, Carrol June Fields, Rona L. Chafey, Shelly D. Bland, Carrie A. Lenz, Shaun E. Curl, Royce D. Tramel, Alice Faye Hall-Walton, and Elton Armstead;

Whereas many other employees and task force officers of the DEA have been wounded or injured in the line of duty; and

Whereas in its 173 domestic offices and 78 foreign offices worldwide the over 8,800 employees of the DEA continue to hunt down and bring to justice the drug trafficking cartels that seek to poison our citizens with dangerous narcotics: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the Drug Enforcement Administration on the occasion of its 30th Anniversary;

(2) honors the heroic sacrifice of those of its employees who have given their lives or been wounded or injured in the service of our Nation; and

(3) thanks all the men and women of the Drug Enforcement Administration for their past and continued efforts to defend the American people from the scourge of illegal drugs.

Mr. GRASSLEY. Mr. President, it is with great pride that I honor and congratulate the Drug Enforcement Agency on its 30th Anniversary. This is an important milestone for the DEA and for our country. Over the last thirty years the men and women of the DEA have worked in communities around the Nation to improve the quality of life for all Americans.

The Drug Enforcement Agency was established on October 4, 1973, soon after John R. Bartles, Jr., was confirmed by the Senate as the DEA's first Administrator. Since then, the men and women of the DEA have continued to serve our Nation with courage and dedication in the face of great odds.

In recognition of this thirty year milestone, it is fitting that we pay tribute to the work and sacrifices of the men and women of the DEA and also acknowledge the organizations many accomplishments.

Currently the DEA operates 173 domestic offices and 78 overseas offices with over 8,800 employees. The DEA continues to lead task forces throughout our Nation's communities in a cooperative effort to control both the consumption and flow of illegal drugs.

Between 1986 and 2002, DEA agents seized over 10,000 kilograms of heroin, 900,000 kilograms of cocaine, 4,600,000 kilograms of marijuana, 113,000,000 dosage units of hallucinogens, and 1,500,000,000 dosage unites of methamphetamine, and made over 443,000 arrests of drug traffickers.

Let me also express my deepest thanks to the DEA for their work and commitment to protecting the communities of Iowa. Although Interstates 80 and 35 cross Iowa providing a ready smuggling route for many drug trafficking organizations, their work has had a tremendous effect on our efforts to squeeze the flow of illegal narcotics through the state. During 2002 the DEA participated in 28 highway interdictions in Iowa, leading to the seizure of approximately 56 kilograms of cocaine, 40.5 pounds of methamphetamine, 2,075 pounds of marijuana, and nearly $1.9 million in cash. Additionally they assisted in the seizure of 871 clandestine laboratories.

Throughout its history, the DEA has proven steadfast in their commitment to bringing drug traffickers to justice. Their service to our country has indeed made a tremendous difference in our nation's communities. However, these accomplishments did not come without a price. Many men and women of the DEA have given their lives and many others wounded and injured in the defense of our Nation.

I am pleased to submit a resolution honoring the men and women of the DEA on their 30th anniversary for their efforts to defend the American people from illegal drugs. I encourage my colleagues to join with me in congratulating and honoring the men and women of the DEA for their many accomplishments and sacrifices throughout their first thirty years. I have every confidence that these men and women will continue in that same tradition of excellence. To those in the DEA both past and present, I offer my sincerest gratitude for your courage, dedication, and service.

SENATE CONCURRENT RESOLUTION 79—EXPRESSING THE SENSE OF CONGRESS THAT THE PRESIDENT SHOULD SECURE THE SOVEREIGN RIGHT OF THE UNITED STATES OF AMERICA AND THE STATES TO PROSECUTE AND PUNISH, ACCORDING TO THE LAWS OF THE UNITED STATES AND THE SEVERAL STATES, CRIMES COMMITTED IN THE UNITED STATES BY INDIVIDUAL WHO SUBSEQUENTLY FLEE TO MEXICO TO ESCAPE PROSECUTION

Mrs. FEINSTEIN (for herself, Mr. BROWNBACK, Mr. NELSON of Florida, Mrs. HUTCHISON, Mr. BINGAMAN, Mr. DOMENICI, Mr. KYL, Mr. CAMPBELL, and Mr. HATCH) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 79

Whereas, under the Extradition Treaty between the United States of America and the United Mexican States, signed at Mexico City May 4, 1978, and entered into force January 25, 1980 (31 UST 5059) (hereafter the ''Extradition Treaty''), Mexico has refused to extradite unconditionally to the United States fugitives facing capital punishment;

Whereas the Mexican Supreme Court ruled in October 2001, that life imprisonment violates the Constitution of Mexico, and Mexico has subsequently repeatedly violated the Extradition Treaty by refusing to extradite unconditionally criminals who face life sentences in the United States;

Whereas numerous individuals have committed serious crimes in the United States, fled to Mexico to avoid prosecution, and have not been brought to justice in the United States because of Mexico's interpretation of the Extradition Treaty;

Whereas these individuals include the persons responsible for the April 29, 2002, murder of Deputy Sheriff David March, the July 17, 2000, killing of Officer Michael Dunman, the August 29, 1998, murder of 12 year old Stephen Morales, the April 9, 1999, attempted murder of Anabella Van Perez and the subsequent August 26, 1999, murder of her father, Carlos Vara, and the December 22, 1989, murder of Mike Juan;

Whereas attorneys general from all 50 States, the National League of Cities, and numerous elected officials, municipalities, and law enforcement associations have asked the United States Attorney General and the Secretary of State to address this extradition issue with their counterparts in Mexico;

Whereas United States Government officials at various levels have raised concerns about the extradition issue with their counterparts in Mexico, including presenting a Protest Note to the Government of Mexico objecting that Mexico's interpretation of the Extradition Treaty is ''unsupported by the Treaty'' and effectively ''eviscerates'' it, with few positive results; and

Whereas the Extradition Treaty, as interpreted by Mexico, interferes with the justice system of the United States and encourages criminals to flee to Mexico; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that the President should address Mexico's failure to fulfill its obligations under the Extradition Treaty between the United States of America and the United Mexican States, signed at Mexico City May 4, 1978, and entered into force January 25, 1980 (31 UST 5059), by renegotiating the treaty or taking other action to ensure that the possibility that criminal suspects from Mexico may face capital punishment or life imprisonment will not interfere with the unconditional and timely extradition of such criminal suspects to the United States.

Mrs. FEINSTEIN. Mr. President, I rise to submit S. Con. Res. 795, a Senate concurrent resolution calling upon the President to address Mexico's failure to fulfill its obligations under the U.S.-Mexico Extradition Treaty, which entered into force in January 1980. I am delighted that Senators BROWNBACK, BILL NELSON, HUTCHISON, BINGAMAN, DOMENICI, KYL, and CAMPBELL join me in submitting this resolution.

Specifically, this resolution calls upon President Bush to renegotiate the Extradition Treaty or take other actions to ensure that the U.S. can extradite serious criminals back to the U.S. for appropriate prosecution and punishment.

In my view, this treaty—at least as interpreted by Mexico—is simply not working as intended. While the U.S. is currently attempting to extradite hundreds of fugitives from Mexico, since 1996, Mexico has sent back only a relative handful every year. For example, in fiscal years 1996 through 2002, Mexico only extradited an average of 14 individuals to the U.S. each year. Even worse, Mexico's recent interpretation of this treaty has effectively eliminated our ability to extradite persons charged with serious crimes who flee to Mexico to avoid prosecution in the United States.

This interpretation has jeopardized the safety of both American and Mexican citizens, undermined the integrity of our criminal justice system, denied basic rights and closure to crime victims, and allowed serious felons to escape just punishment. The result is that Mexico is becoming a safe haven for hard-core criminals. If you steal a car in the U.S., Mexico will return you to face prosecution and punishment. If you kill the driver, Mexico will protect you.

The problem in a nutshell is that, since October 2001, Mexico has read the U.S.-Mexico Extradition Treaty as barring the extradition to the United States of anyone who faces a potential life term. In other words, if a person commits a serious crime in the U.S.—one that could subject them to a maximum life term—and heads south, Mexico will refuse to extradite that person to the U.S. to face prosecution and punishment in this country.

While it has been difficult to determine the full scope of the problem, I am informed by prosecutors in California that, as a result of Mexico's interpretation of the Extradition Treaty, there are as many as 350 people who have committed murder and other serious crimes in California who have either not been extradited or have been effectively rendered non-extraditable.

These 350 people have thus escaped appropriate prosecution and punishment under California law. Many of these people are living free and unpunished in Mexico. In some cases, we even know where they are.

Let me quote from a recent Santa Barbara News Press article: A half dozen people wanted in the slayings of Santa Barbara residents are believed to be living free in Mexico. Santa Barbara police detectives even know where three of them live. But there's not much they can do about it. ''If I had unfettered access to the proper investigative tools and contacts, we could have them in custody in a matter of days,'' said Detective Tim Roberts . . . ''But that's not the case.''

Let me give you an example of another especially heinous case.

On April 29, 2002, Armando Garcia, a Mexican national who had been previously charged in the U.S. with two counts of attempted murder, allegedly shot and killed, execution-style, 33-year-old Los Angeles County Deputy Sheriff David March during a routine traffic stop in Irwindale, CA. Garcia then fled to Mexico, where he remains a free man.

Los Angeles District Attorney Steve Cooley has not formally requested Garcia's extradition because he says that there is no point. Mexico will demand that Cooley promise that Garcia will not receive life in prison for his crime—a promise that cannot be made because in this country sentences are up to a judge to set, once a person has been convicted of a crime. The results is that Garcia remains at large in Mexico.

And earlier this year there was a horrific case in Santa Cruz implicating the Extradition Treaty. Miguel Ramirez Loza, 27 years old, allegedly attacked his 17-year-old girlfriend in an abandoned preschool building, slashing her throat and then spitting on her. As his girlfriend lay dying, he then raped the victim's 17-year-old friend. Loza's girlfriend was in a coma for months after the crime and just recently died.

Loza is now in Mexico and is apparently in a Mexican jail as a result of a stabbing in Mexico unrelated to the Santa Cruz incident. However, according to Santa Cruz District Attorney Bob Lee, Loza cannot be extradited for the murder and rape in California because of Mexico's interpretation of the Extradition Treaty.

It is true that Mexico does sometimes prosecute individuals in Mexico who committed crimes in the U.S. under Article IV of its Criminal Code. But often Mexico fails to do this. And, in any event, there is no substitute for extraditing the person to the United States.

There are credible reports that defendants in Mexico sometimes buy their acquittals. And, at least by U.S. standards, Mexican standards of justice can be quite low. Trials often take place with no testimony and no witnesses. Victims and their families are not invited or consulted. And sentences—often reduced on appeal—frequently bear little resemblance to those authorized by U.S. sentencing laws.

Not surprisingly, according to an article in the Las Vegas Review-Journal, ''More than a dozen prosecutors in Nevada, California and Arizona who were interviewed for this story criticized Article IV as an ineffectual alternative to extradition.'' One prosecutor, Jan Maurizi of the Los Angeles District Attorney's Office, stated that she ''sent demands to the Mexican government asking what happened to 97 Article IV cases that have seemingly disappeared from the justice system. Mexico . . . never responded. But from others we've talked to in unofficial channels, it's clear the vast majority of them are grossly inadequate sentences. Most of them, nothing happens.''

Another prosecutor, Val Jimenez, the special agent supervisor of the Foreign Prosecution Unit at the California Attorney General's Office, has mentioned one recent case where a defendant ''got 20 years for doing a homicide, appealed, and he was out in 18 months.'' And even if defendants were convicted, they may not serve real time. It was not until last year that Mexico finally tore down the infamous La Mesa State Penitentiary in Tijuana. La Mesa was a place where prisoners were free to purchase $25,000 townhomes with cell phones, tiled bathrooms, Jacuzzis, microwaves, computers, DVD players, and guard dogs such as Rottweilers. One murder in the prison was committed with a Uzi.

The U.S.-Mexico Extradition Treaty provides that neither country is bound to deliver up its nationals for extradition. It further provides that where the offense for which extradition is sought is punishable by death, a country may refuse to extradite unless the country seeking extradition assures that it will not impose the death penalty. Under the Treaty, the death penalty is the sole punishment for which assurances may be required. For decades, Mexico has extradited suspects to California and other states without inordinate problems. Then, in October 2001, the Mexican Supreme Court ruled that life imprisonment violates the Constitution of Mexico and extended this interpretation to the Extradition Treaty. Specifically, the Court decided that Mexico could no longer extradite a fugitive who is subject to life imprisonment with or without the possibility of parole, unless assurances are given that guarantee a determinate term of years.

Here is what the Mexican Supreme Court said in Opinion No. 125/2001, which is about a half-page long: [T]he punishment of life imprisonment is considered an unusual penalty and is prohibited by . . . article 22 of the [Mexican Constitution], inasmuch as it departs from the essential purpose of the penalty, which is the rehabilitation of the offender to incorporate him/her into society. It is, therefore, unquestionable that the requesting [i.e., extraditing] State must bind itself not to impose the penalty of life imprisonment, only another less serious punishment.

Article 22 of the Mexican Constitution prohibits ''[p]unishment by mutilation and extreme cruelty, branding, flogging, beating with sticks, torture of any kind, excessive fines, confiscation of property and any other unusual or extreme penalties. . . .''

In light of the fact that the Extradition Treaty prohibits Mexico from extraditing criminals to the U.S. unless the U.S. agrees to waive the death penalty, it is interesting to note that Article 22 of the Mexican Constitution specifically allows the death penalty for ''high treason committed during a foreign war; parricide; murder that is treacherous, premeditated, or committed for profit; arson; abduction; highway robbery; piracy; and grave military offenses.''

So, in other words, according to the Mexican Supreme Court, the Mexican Constitution allows the death penalty for highway robbery in Mexico but, should an American criminal murder a police officer in California and then flee to Mexico, Mexico will refuse to turn this person over to the U.S. if he would face either the death penalty or a possible life term.

In my view, this makes no sense. However, Mexico as a sovereign nation is free to interpret its domestic law as it sees fit. I do not quarrel with their interpretation of their own law. But I do question whether Mexico can unilaterally rewrite the U.S.-Mexican Extradition Treaty. And that is exactly the effect of its interpretation of the Treaty as barring extradition to the U.S. of any alleged criminal who faces a possible life term. In fact, Mexico's interpretation of the Treaty is unsupported by and inconsistent with the Treaty's language, purpose, structure, and history. It is also conflicts with the Vienna Convention on the Law of Treaties, which states that a treaty shall be interpreted ''in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.''

As the U.S. State Department has made clear in a Protest Note to the Mexican Government after the October 2001 decision, [R]equiring assurances for a punishment other than the death penalty is unsupported by the Treaty, which provides the substantive extradition requirement. . . . To give [the Treaty] the reading Mexico has given it eviscerates the Treaty, for such a reading would disregard the substantive exceptions found in Articles 5 through 9, and would permit each Party to refuse each other's extradition requests based on its domestic law on sentencing, which could be changed unilaterally at any time, even if that change rendered the law inconsistent with the Treaty.

Moreover, Mexico's interpretation of the Treaty has made it effectively impossible to extradite from Mexico individuals who commit murder or other serious crimes in California and many other States. In California, for example, over 40 different crimes are punishable by possible life sentences and neither a judge nor a prosecutor can give assurances of a determinate term for these crimes. As a result, Mexico's policy encourages people committing serious crimes in California to flee to Mexico and escape just punishment. Indeed, individuals in the United States with a criminal history have a perverse incentive to kill an arresting police officer and head for Mexico rather than face possible prosecution and imprisonment in the United States.

Given Mexico's interpretation of the Treaty, the only way to extradite a Mexican national charged with a ''life'' crime is to seek extradition on reduced charges punishable by a determinate sentence. But this would mean treating more harshly those who commit a crime and remain in California than those who commit the same crime and flee to Mexico. This is not only unfair and a blow to the integrity of our criminal justice system. But it also just encourages criminals to flee to Mexico to reduce their potential punishment.

Moreover, it is unclear exactly what assurances will suffice. In at least one Federal major narcotics trafficking case, a Mexican court determined that a twenty-year sentence was ''cruel and unusual'' and thus unconstitutional. And some Mexican courts have ruled that only a judge can give sufficient assurances—a legal impossibility under California's judicial system.

Mexico's interpretation of the U.S.-Mexico Extradition Treaty has unquestionably had a particularly harmful effect on my home state of California. I would like to commend the Los Angeles District Attorney Steve Cooley and Deputy District Attorney Jan Maurizi for their work in identifying cases of individuals who have committed murder and other serious crimes in California who have either not been extradited or have been effectively rendered non-extraditable. As I noted before, there are at least 350 such cases just in my home state. Many district attorneys do not keep adequate records of which suspects fled to Mexico, which cases are potentially extraditable, and which cases have been or could be subject to Article IV prosecution.

In fact, when we asked the National Association of District Attorneys to conduct a survey of how many cases have been affected by Mexico's interpretation of the Treaty, it received responses from only 17 jurisdictions, and much of this information was anecdotal. This survey, though, does demonstrate that the problem caused by Mexico's interpretation of the Extradition Treaty also afflict a number of other states. Based on the information we received, there are at least 60 cases around the country outside of California—and this number probably grossly understates the problem. These cases are in Arizona, Florida, Hawaii, Nevada, New York, Oregon, Tennessee, Texas, and Washington. These numbers, though, do not tell whole story. In every case, there is a horrible crime, a victim, a shattered family, and a horrible injustice.

I have already discussed a couple of specific criminal cases implicating the U.S.-Mexico Extradition Treaty. But now I would like to talk about four more. In every case, the perpetrator of a heinous crime has escaped appropriate punishment because of Mexico's interpretation of the U.S.-Mexico Extradition Treaty.

In August of 1999, Daniel Perez, a Mexican national, was convicted in absentia in Los Angeles County by a jury for the crimes of attempted first degree murder, use of a firearm, espousal battery, kidnapping, false imprisonment and stalking his estranged wife.

Perez and the 21-year-old victim, Anabella Vera, were separated. They met at a pizza place. After kidnapping her at gunpoint and terrorizing her for two hours, Anabella finally convinced Perez that she would return home with him. Perez then drove Anabella to her car. After Anabella tried to drive away from him, Perez chased her in his car, ramming her vehicle and forcing her to run red lights. Ultimately, Anabella became stuck in traffic and, in a desperate bid to save her life, abandoned her car and tried to flee. Perez then caught Anabella at a gas station and shot her in the head. Miraculously, she survived.

During the trial and while out on bail, Perez drove to Fontana, CA to the home of Anabella's father, who had been a key witness against Perez. In front of Anabella's siblings, Perez shot and killed Anabella's father. Perez then allegedly fled to Mexico, where he is still at large.

Perez was sentenced in absentia in Los Angeles County for attempted murder to a term of 33 years to life, plus an additional life term. In addition, the San Bernardino County District Attorney's Office has charged Perez with the murder of the victim's father and the special circumstances of killing a witness. These charges carry a potential punishment of life in prison without the possibility of parole or, if it is not waived, the death penalty. Because Mexico does not recognize convictions in absentia, my understanding is that Mexico will neither extradite Perez for attempted murder nor prosecute him under Article IV of the Mexican Federal Penal Code.

Alvara Luna Jara has been charged with the special circumstances murder of 12-year-old Steven Morales and the attempted murder of three others. On August 29, 1998, Steven was playing with several other children in front of their apartment, near three members of a local sheet gang. As Jara drove by, he and the three gang members exchanged hand gestures. Jara then extended his arm out of the car window and fired three rounds into the crowd, killing Steven with a gunshot to the head. Jara then fled to Mexico. If convicted in the United States, Jara could face life without possibility of parole or, if it is not waived, the death penalty. However, while Jara is not a Mexican national, the Mexican government has refused to deport him because his parents are Mexican nationals. After this refusal, Los Angeles District Attorney Cooley began formal extradition proceedings. However, because of Mexico's interpretation of the October 2000 Mexican Supreme Court decision, Cooley never submitted the formal request.

On May 7, 1988, Father Nicholas Aguilar Rivera, a Catholic priest, was charged with 19 counts of child molestation. The day after he was charged, Father Rivera fled to Mexico. Although the case was supposed to be prosecuted promptly under Article IV, Mexican prosecutors failed to submit the case for prosecution until 1995. The Mexican court dismissed the matter as untimely and entered an acquittal. Now, both countries are barred from further prosecution.

On May 17, 1998, Ruben Hernandez Martinez and Luis Castanon allegedly broke into the Nashville apartment of Kelly Quinn and her roommate after waiting for Ms. Quinn to return home. They then attacked her, raping her continuously for hours. When they were done, they made Ms. Quinn shower to remove any DNA evidence. However, Ms. Quinn was able to conceal semen that was on her neck. Castanon was arrested and, on the basis of fingerprint and serology evidence, convicted of aggravated sexual assault. He was sentenced to 60 years. Martinez, whom Nashville police believe committed several other rapes as well, fled to Mexico. I am informed that, while Martinez has been in custody in a Mexico City jail for over a year, Mexico has still refused to make a decision as to whether they will extradite him.

The United States can and must retain discretion to prosecute and punish its most dangerous and violent offenders who commit crimes in the United States according to U.S. laws. Criminals should not be allowed to escape justice in the U.S. for the price of a bus ticket to Mexico.

I would now like read a letter I received from a youngster in California about this problem. Here is what he says:

My mom is a deputy sheriff for Los Angeles. Every night she goes to work. I say a prayer for her she will come home safely. So far she has. Deputy March was not so lucky. I wonder how his kids must feel not having a dad any longer. Could you please help catch the man that killed Deputy March. I listen to the radio a lot and they said the bad man that did this is in Mexico and he is not in jail. Could you please get him back here so my mom will be safer when she goes to work.

Thank you.

It is unfortunate that we live in a country where we cannot assure a youngster that the man who killed his mom's colleague won't come back and hurt her too. That is why we need to pass this resolution now. That is why we need the President to act.

I ask my colleagues for their support.

I also ask unanimous consent that an October 24, 2003 Resolution of the International Association of Chiefs of Police be printed in the RECORD.

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

[Resolution From the International Association of Chiefs of Police, Adopted Oct. 24, 2003]

EXTRADITION OF CRIMINAL SUSPECTS

(Submitted by the Executive Committee)

Whereas, the law enforcement profession has a compelling interest in ensuring that individuals suspected of committing crimes are not able to evade justice by leaving the country in which the crime was committed; and

Whereas, in response to this problem, many nations have established extradition treaties that allow for the return of criminal fugitives to the country in which they are suspected of committing crimes; and

Whereas, extradition treaties are political agreements between nations; and,

Whereas, the International Association of Chiefs of Police refrains from entering into political disputes between nations unless an issue which clearly impacts the law enforcement profession is involved; and

Whereas, these treaties form the backbone of international law enforcement efforts and have allowed for the successful apprehension and conviction of many fugitives over the years, and

Whereas, the effectiveness of these treaties relies upon the timely return of criminal suspects; and

Whereas, the terms of some extradition treaties have proven to be too restrictive and have significantly limited the ability of law enforcement agencies to bring a criminal suspect to trial and have, in effect, allowed for the creation of safe havens for criminal fugitives; and

Whereas, for example, the Extradition Treaty between the United States of America and the United Mexican States allows the United Mexican States to refuse to extradite criminal suspects who face capital punishment for crimes committed within the United States, and a recent decision of the Mexican Supreme Court has unilaterally and mandatorily extended that prohibition on life sentences, and

Whereas, it is clear that extradition treaties and agreements that do not allow for the timely return of criminal suspects or that condition their return on the domestic sentencing laws of the requested state are an issue that clearly impacts the law enforcement profession and it is appropriate for the International Association of Chiefs of Police to express the concern of the law enforcement community in this matter and work to resolve this situation; Now, therefore be it

Resolved, That the International Association of Chief of Police calls on all nations to ensure that extradition treaties serve only to guarantee that accused individuals are provided with due process of law and not to provide criminal suspects with a means of evading justice; and be it

Further resolved, That the International Association of Chiefs of Police calls on the governments of the United States of America and the United Mexican States to renegotiate the extradition treaty so that the possibility of capital punishment or life imprisonment shall not interfere with the timely and unconditional extradition of criminal suspects.

AMENDMENTS SUBMITTED & PROPOSED

SA 2141. Ms. STABENOW proposed an amendment to amendment SA 2136 proposed by Mr. MCCAIN (for himself, Mr. ALLEN, Mr. WYDEN, Mr. BURNS, Mr. ENSIGN, Mr. SUNUNU, Mr. WARNER, Mr. SMITH, Mr. LEAHY, Mr. GRASSLEY, Mr. HATCH, Mr. BAUCUS, Mrs. BOXER, Mr. CHAMBLISS, and Mrs. LINCOLN) to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

SA 2142. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 150, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2141. Ms. STABENOW proposed an amendment to amendment SA 2136 proposed by Mr. MCCAIN (for himself, Mr. ALLEN, Mr. WYDEN, Mr. BURNS, Mr. ENSIGN, Mr. SUNUNU, Mr. WARNER, Mr. SMITH, Mr. LEAHY, Mr. GRASSLEY, Mr. HATCH, Mr. BAUCUS, Mrs. BOXER, Mr. CHAMBLISS, and Mr. LINCOLN) to the bill S. 150, to make permanent the moratoriumm on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; as follows:

At the appropriate place insert the following:

Since, Article I of the U.S. Constitution grants Congress the power of the purse; and

Since, Congressional oversight of Executive Branch expenditures of public funds is essential in order to prevent waste, fraud, and abuse of taxpayer dollars; and

Since, Congress can only exercise its oversight responsibilities if the White House and Executive Branch agencies are responsive to requests for information about public expenditures;

Therefore it is the Sense of the Senate that,

The White House and all Executive Branch agencies should respond promptly and completely to all requests by Members of Congress of both parties for information about public expenditures.

SA 2142. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC . GAO STUDY OF EFFECTS OF INTERNET TAX MORATORIUM ON STATE AND LOCAL GOVERNMENTS AND ON BROADBAND DEPLOYMENT.

The Comptroller General shall conduct a study of the impact of the Internet tax moratorium, including its effects on the revenues of State and local governments and on the deployment of broadband technologies throughout the United States. The Comptroller General shall report the findings, conclusions, and any recommendations from the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce no later than November 1, 2005.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that the hearing previously scheduled before the Committee on Energy and Natural Resources on Wednesday, November 12 at 10 a.m. has been rescheduled for Friday, November 14 at 10 a.m. in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to conduct oversight of the implementation of the Energy Employees Occupational Illness Compensation Program.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. CRAIG. Mr. President, I would like to announce, for the information of the Senate and the public, that the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources will hold a hearing on November 18, 2003 at 2:30 p.m. in room SD 366 of the Dirksen Senate Office Building.

The purpose of the hearing is to consider S. 1467, a bill to establish the Rio Grande Outstanding Natural Area in the State of Colorado, and for other purposes, S. 1209, a bill to provide for the acquisition of property in Washington County, UT, for implementation of a desert tortoise habitat conservation plan, and H.R. 708, a bill to require the conveyance of certain National Forest System lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for National Forest purposes, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364, Washington, DC 20510–6150 prior to the hearing date.

For further information, please contact Dick Bouts or Meghan Beal (202–224–7556).

SUBCOMMITTEE ON ENERGY

Mr. ALEXANDER. Mr. President, I would like to announce for the information of the Senate and the public

that the Subcommittee on Energy of the Committee on Energy and Natural Resources will hold a hearing on Saturday, December 6, 2003 at 9 a.m. The hearing will be held at the Paducah Information Age Park, 2000 McCracken Blvd., Paducah, KY.

The purpose of the hearing is to conduct oversight and accounting of the cleanup at the Department of Energy's Paducah, KY site.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364, Washington, DC 20510–6150.

For further information, please contact Pete Lyons (202–224–5861) or Shane Perkins (202–224–7555).

AUTHORITY FOR COMMITTEES TO MEET

JOINT ECONOMIC COMMITTEE

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Joint Economic Committee be authorized to conduct a hearing in room 628 of the Dirksen Senate Office Building, Friday, November 7, 2003, from 9:30 a.m. to 1 p.m.

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

PRIVILEGES OF THE FLOOR

Mr. DORGAN. Mr. President, I ask unanimous consent Jason Estep, a fellow from my office, have floor privileges for today.

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

Mr. DURBIN. Mr. President, I ask unanimous consent that Dale Jones, a member of my staff, be granted the privilege of the floor during debate on S. 150.

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

BLACKWATER NATIONAL WILDLIFE REFUGE EXPANSION ACT

The PRESIDING OFFICER. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 356, H.R. 274.

The PRESIDING OFFICER.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 274) to authorize the Secretary of the Interior to acquire the property in Cecil County, Maryland, known as Garrett Island for inclusion in the Blackwater National Wildlife Refuge.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The bill (H.R. 274) was read the third time and passed.

ANIMAL DRUG USER FEE ACT OF 2003

Mr. FRIST. I ask unanimous consent that the Chair now lay before the Senate a message from House of Representatives on the bill (S. 313) to amend the Federal Food, Drug, and Cosmetic Act to establish a program of fees relating to animal drugs.

There being no objection, the Presiding Officer laid before the Senate the following message from the House of Representatives:

S. 313

Resolved, That the bill from the Senate (S. 313) entitled ''An Act to amend the Federal Food, Drug, and Cosmetic Act to establish a program of fees relating to animal drugs'', do pass with the following amendment; Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Animal Drug User Fee Act of 2003''.

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Prompt approval of safe and effective new animal drugs is critical to the improvement of animal health and the public health.

(2) Animal health and the public health will be served by making additional funds available for the purpose of augmenting the resources of the Food and Drug Administration that are devoted to the process for review of new animal drug applications.

(3) The fees authorized by this Act will be dedicated toward expediting the animal drug development process and the review of new and supplemental animal drug applications and investigational animal drug submissions as set forth in the goals identified, for purposes of part 4 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act, in the letters from the Secretary of Health and Human Services to the Chairman of the Committee on Energy and Commerce of the House of Representatives and the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate as set forth in the Congressional Record.

SEC. 3. FEES RELATING TO ANIMAL DRUGS.

Subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379f et seq.) is amended by adding at the end the following part:

''PART 4—FEES RELATING TO ANIMAL DRUGS

''SEC. 739. DEFINITIONS.

''For purposes of this subchapter:

''(1) The term 'animal drug application' means an application for approval of any new animal drug submitted under section 512(b)(1). Such term does not include either a new animal drug application submitted under section 512(b)(2) or a supplemental animal drug application.

''(2) The term 'supplemental animal drug application' means—

''(A) a request to the Secretary to approve a change in an animal drug application which has been approved; or

''(B) a request to the Secretary to approve a change to an application approved under section 512(c)(2) for which data with respect to safety or effectiveness are required.

''(3) The term 'animal drug product' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an animal drug application or a supplemental animal drug application has been approved.

''(4) The term 'animal drug establishment' means a foreign or domestic place of business which is at one general physical location consisting of one or more buildings all of which are within 5 miles of each other, at which one or more animal drug products are manufactured in final dosage form.

''(5) The term 'investigational animal drug submission' means—

''(A) the filing of a claim for an investigational exemption under section 512(j) for a new animal drug intended to be the subject of an animal drug application or a supplemental animal drug application, or

''(B) the submission of information for the purpose of enabling the Secretary to evaluate the safety or effectiveness of an animal drug application or supplemental animal drug application in the event of their filing.

''(6) The term 'animal drug sponsor' means either an applicant named in an animal drug application, except for an approved application for which all subject products have been removed from listing under section 510, or a person who has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive by the Secretary.

''(7) The term 'final dosage form' means, with respect to an animal drug product, a finished dosage form which is approved for administration to an animal without substantial further manufacturing. Such term includes animal drug products intended for mixing in animal feeds.

''(8) The term 'process for the review of animal drug applications' means the following activities of the Secretary with respect to the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions:

''(A) The activities necessary for the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

''(B) The issuance of action letters which approve animal drug applications or supplemental animal drug applications or which set forth in detail the specific deficiencies in animal drug applications, supplemental animal drug applications, or investigational animal drug submissions and, where appropriate, the actions necessary to place such applications, supplements or submissions in condition for approval.

''(C) The inspection of animal drug establishments and other facilities undertaken as part of the Secretary's review of pending animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

''(D) Monitoring of research conducted in connection with the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

''(E) The development of regulations and policy related to the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

''(F) Development of standards for products subject to review.

''(G) Meetings between the agency and the animal drug sponsor.

''(H) Review of advertising and labeling prior to approval of an animal drug application or supplemental animal drug application, but not such activities after an animal drug has been approved.

''(9) The term 'costs of resources allocated for the process for the review of animal drug applications' means the expenses incurred in connection with the process for the review of animal drug applications for—

''(A) officers and employees of the Food and Drug Administration, contractors of the Food and Drug Administration, advisory committees consulted with respect to the review of specific animal drug applications, supplemental animal

drug applications, or investigational animal drug submissions, and costs related to such officers, employees, committees, and contractors, including costs for travel, education, and recruitment and other personnel activities,

''(B) management of information, and the acquisition, maintenance, and repair of computer resources,

''(C) leasing, maintenance, renovation, and repair of facilities and acquisition, maintenance, and repair of fixtures, furniture, scientific equipment, and other necessary materials and supplies, and

''(D) collecting fees under section 740 and accounting for resources allocated for the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

''(10) The term 'adjustment factor' applicable to a fiscal year refers to the formula set forth in section 735(8) with the base or comparator year being 2003.

''(11) The term 'affiliate' refers to the definition set forth in section 735(9).

''SEC. 740. AUTHORITY TO ASSESS AND USE ANIMAL DRUG FEES.

''(a) TYPES OF FEES.—Beginning in fiscal year 2004, the Secretary shall assess and collect fees in accordance with this section as follows:

''(1) ANIMAL DRUG APPLICATION AND SUPPLEMENT FEE.—

''(A) IN GENERAL.—Each person that submits, on or after September 1, 2003, an animal drug application or a supplemental animal drug application shall be subject to a fee as follows:

''(i) A fee established in subsection (b) for an animal drug application; and

''(ii) A fee established in subsection (b) for a supplemental animal drug application for which safety or effectiveness data are required, in an amount that is equal to 50 percent of the amount of the fee under clause (i).

''(B) PAYMENT.—The fee required by subparagraph (A) shall be due upon submission of the animal drug application or supplemental animal drug application.

''(C) EXCEPTION FOR PREVIOUSLY FILED APPLICATION OR SUPPLEMENT.—If an animal drug application or a supplemental animal drug application was submitted by a person that paid the fee for such application or supplement, was accepted for filing, and was not approved or was withdrawn (without a waiver or refund), the submission of an animal drug application or a supplemental animal drug application for the same product by the same person (or the person's licensee, assignee, or successor) shall not be subject to a fee under subparagraph (A).

''(D) REFUND OF FEE IF APPLICATION REFUSED FOR FILING.—The Secretary shall refund 75 percent of the fee paid under subparagraph (B) for any animal drug application or supplemental animal drug application which is refused for filing.

''(E) REFUND OF FEE IF APPLICATION WITHDRAWN.—If an animal drug application or a supplemental animal drug application is withdrawn after the application or supplement was filed, the Secretary may refund the fee or portion of the fee paid under subparagraph (B) if no substantial work was performed on the application or supplement after the application or supplement was filed. The Secretary shall have the sole discretion to refund the fee under this paragraph. A determination by the Secretary concerning a refund under this paragraph shall not be reviewable.

''(2) ANIMAL DRUG PRODUCT FEE.—Each person—

''(A) who is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product which has been submitted for listing under section 510, and

''(B) who, after September 1, 2003, had pending before the Secretary an animal drug application or supplemental animal drug application;

shall pay for each such animal drug product the annual fee established in subsection (b). Such fee shall be payable for the fiscal year in which the animal drug product is first submitted for listing under section 510, or is submitted for relisting under section 510 if the animal drug product has been withdrawn from listing and relisted. After such fee is paid for that fiscal year, such fee shall be payable on or before January 31 of each year. Such fee shall be paid only once for each animal drug product for a fiscal year in which the fee is payable.

''(3) ANIMAL DRUG ESTABLISHMENT FEE.—Each person—

''(A) who owns or operates, directly or through an affiliate, an animal drug establishment, and

''(B) who is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product which has been submitted for listing under section 510, and

''(C) who, after September 1, 2003, had pending before the Secretary an animal drug application or supplemental animal drug application,

shall be assessed an annual fee established in subsection (b) for each animal drug establishment listed in its approved animal drug application as an establishment that manufactures the animal drug product named in the application. The annual establishment fee shall be assessed in each fiscal year in which the animal drug product named in the application is assessed a fee under paragraph (2) unless the animal drug establishment listed in the application does not engage in the manufacture of the animal drug product during the fiscal year. The fee shall be paid on or before January 31 of each year. The establishment shall be assessed only one fee per fiscal year under this section, provided, however, that where a single establishment manufactures both animal drug products and prescription drug products, as defined in section 735(3), such establishment shall be assessed both the animal drug establishment fee and the prescription drug establishment fee, as set forth in section 736(a)(2), within a single fiscal year.

''(4) ANIMAL DRUG SPONSOR FEE.—Each person—

''(A) who meets the definition of an animal drug sponsor within a fiscal year; and

''(B) who, after September 1, 2003, had pending before the Secretary an animal drug application, a supplemental animal drug application, or an investigational animal drug submission,

shall be assessed an annual fee established under subsection (b). The fee shall be paid on or before January 31 of each year. Each animal drug sponsor shall pay only one such fee each fiscal year.

''(b) FEE AMOUNTS.—Except as provided in subsection (a)(1) and subsections (c), (d), (f), and (g), the fees required under subsection (a) shall be established to generate fee revenue amounts as follows:

''(1) TOTAL FEE REVENUES FOR APPLICATION AND SUPPLEMENT FEES.—The total fee revenues to be collected in animal drug application fees under subsection (a)(1)(A)(i) and supplemental animal drug application fees under subsection (a)(1)(A)(ii) shall be $1,250,000 in fiscal year 2004, $2,000,000 in fiscal year 2005, and $2,500,000 in fiscal years 2006, 2007, and 2008.

''(2) TOTAL FEE REVENUES FOR PRODUCT FEES.—The total fee revenues to be collected in product fees under subsection (a)(2) shall be $1,250,000 in fiscal year 2004, $2,000,000 in fiscal year 2005, and $2,500,000 in fiscal years 2006, 2007, and 2008.

''(3) TOTAL FEE REVENUES FOR ESTABLISHMENT FEES.—The total fee revenues to be collected in establishment fees under subsection (a)(3) shall be $1,250,000 in fiscal year 2004, $2,000,000 in fiscal year 2005, and $2,500,000 in fiscal years 2006, 2007, and 2008.

''(4) TOTAL FEE REVENUES FOR SPONSOR FEES.—The total fee revenues to be collected in sponsor fees under subsection (a)(4) shall be $1,250,000 in fiscal year 2004, $2,000,000 in fiscal year 2005, and $2,500,000 in fiscal years 2006, 2007, and 2008.

''(c) ADJUSTMENTS.—

''(1) INFLATION ADJUSTMENT.—The revenues established in subsection (b) shall be adjusted by the Secretary by notice, published in the Federal Register, for a fiscal year to reflect the greater of—

''(A) the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending June 30 preceding the fiscal year for which fees are being established; or

''(B) the total percentage change for the previous fiscal year in basic pay under the General Schedule in accordance with section 5332 of title 5, United States Code, as adjusted by any locality-based comparability payment pursuant to section 5304 of such title for Federal employees stationed in the District of Columbia.

The adjustment made each fiscal year by this subsection will be added on a compounded basis to the sum of all adjustments made each fiscal year after fiscal year 2004 under this subsection.

''(2) WORKLOAD ADJUSTMENT.—After the fee revenues are adjusted for inflation in accordance with paragraph (1), the fee revenues shall be further adjusted each fiscal year after fiscal year 2004 to reflect changes in review workload. With respect to such adjustment:

''(A) This adjustment shall be determined by the Secretary based on a weighted average of the change in the total number of animal drug applications, supplemental animal drug applications for which data with respect to safety or effectiveness are required, manufacturing supplemental animal drug applications, investigational animal drug study submissions, and investigational animal drug protocol submissions submitted to the Secretary. The Secretary shall publish in the Federal Register the fees resulting from this adjustment and the supporting methodologies.

''(B) Under no circumstances shall this workload adjustment result in fee revenues for a fiscal year that are less than the fee revenues for that fiscal year established in subsection (b), as adjusted for inflation under paragraph (1).

''(3) FINAL YEAR ADJUSTMENT.—For fiscal year 2008, the Secretary may further increase the fees to provide for up to 3 months of operating reserves of carryover user fees for the process for the review of animal drug applications for the first 3 months of fiscal year 2009. If the Food and Drug Administration has carryover balances for the process for the review of animal drug applications in excess of 3 months of such operating reserves, then this adjustment will not be made. If this adjustment is necessary, then the rationale for the amount of the increase shall be contained in the annual notice setting fees for fiscal year 2008.

''(4) ANNUAL FEE SETTING.—The Secretary shall establish, 60 days before the start of each fiscal year beginning after September 30, 2003, for that fiscal year, animal drug application fees, supplemental animal drug application fees, animal drug sponsor fees, animal drug establishment fees, and animal drug product fees based on the revenue amounts established under subsection (b) and the adjustments provided under this subsection.

''(5) LIMIT.—The total amount of fees charged, as adjusted under this subsection, for a fiscal year may not exceed the total costs for such fiscal year for the resources allocated for the process for the review of animal drug applications.

''(d) FEE WAIVER OR REDUCTION.—

''(1) IN GENERAL.—The Secretary shall grant a waiver from or a reduction of 1 or more fees assessed under subsection (a) where the Secretary finds that—

''(A) the assessment of the fee would present a significant barrier to innovation because of limited resources available to such person or other circumstances,

''(B) the fees to be paid by such person will exceed the anticipated present and future costs incurred by the Secretary in conducting the process for the review of animal drug applications for such person,

''(C) the animal drug application or supplemental animal drug application is intended solely to provide for use of the animal drug in—

''(i) a Type B medicated feed (as defined in section 558.3(b)(3) of title 21, Code of Federal Regulations (or any successor regulation)) intended for use in the manufacture of Type C free-choice medicated feeds, or

''(ii) a Type C free-choice medicated feed (as defined in section 558.3(b)(4) of title 21, Code of Federal Regulations (or any successor regulation)),

''(D) the animal drug application or supplemental animal drug application is intended solely to provide for a minor use or minor species indication, or

''(E) the sponsor involved is a small business submitting its first animal drug application to the Secretary for review.

''(2) USE OF STANDARD COSTS.—In making the finding in paragraph (1)(B), the Secretary may use standard costs.

''(3) RULES FOR SMALL BUSINESSES.—

''(A) DEFINITION.—In paragraph (1)(E), the term 'small business' means an entity that has fewer than 500 employees, including employees of affiliates.

''(B) WAIVER OF APPLICATION FEE.—The Secretary shall waive under paragraph (1)(E) the application fee for the first animal drug application that a small business or its affiliate submits to the Secretary for review. After a small business or its affiliate is granted such a waiver, the small business or its affiliate shall pay application fees for all subsequent animal drug applications and supplemental animal drug applications for which safety or effectiveness data are required in the same manner as an entity that does not qualify as a small business.

''(C) CERTIFICATION.—The Secretary shall require any person who applies for a waiver under paragraph (1)(E) to certify their qualification for the waiver. The Secretary shall periodically publish in the Federal Register a list of persons making such certifications.

''(e) EFFECT OF FAILURE TO PAY FEES.—An animal drug application or supplemental animal drug application submitted by a person subject to fees under subsection (a) shall be considered incomplete and shall not be accepted for filing by the Secretary until all fees owed by such person have been paid. An investigational animal drug submission under section 739(5)(B) that is submitted by a person subject to fees under subsection (a) shall be considered incomplete and shall not be accepted for review by the Secretary until all fees owed by such person have been paid. The Secretary may discontinue review of any animal drug application, supplemental animal drug application or investigational animal drug submission from a person if such person has not submitted for payment all fees owed under this section by 30 days after the date upon which they are due.

''(f) ASSESSMENT OF FEES.—

''(1) LIMITATION.—Fees may not be assessed under subsection (a) for a fiscal year beginning after fiscal year 2003 unless appropriations for salaries and expenses of the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) are equal to or greater than the amount of appropriations for the salaries and expenses of the Food and Drug Administration for the fiscal year 2003 (excluding the amount of fees appropriated for such fiscal year) multiplied by the adjustment factor applicable to the fiscal year involved.

''(2) AUTHORITY.—If the Secretary does not assess fees under subsection (a) during any portion of a fiscal year because of paragraph (1) and if at a later date in such fiscal year the Secretary may assess such fees, the Secretary may assess and collect such fees, without any modification in the rate, for animal drug applications, supplemental animal drug applications, investigational animal drug submissions, animal drug sponsors, animal drug establishments and animal drug products at any time in such fiscal year notwithstanding the provisions of subsection (a) relating to the date fees are to be paid.

''(g) CREDITING AND AVAILABILITY OF FEES.—

''(1) IN GENERAL.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Such fees are authorized to be appropriated to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation account for salary and expenses with such fiscal year limitation. The sums transferred shall be available solely for the process for the review of animal drug applications.

''(2) COLLECTIONS AND APPROPRIATION ACTS.—

''(A) IN GENERAL.—The fees authorized by this section—

''(i) shall be retained in each fiscal year in an amount not to exceed the amount specified in appropriation Acts, or otherwise made available for obligation for such fiscal year, and

''(ii) shall only be collected and available to defray increases in the costs of the resources allocated for the process for the review of animal drug applications (including increases in such costs for an additional number of full-time equivalent positions in the Department of Health and Human Services to be engaged in such process) over such costs, excluding costs paid from fees collected under this section, for fiscal year 2003 multiplied by the adjustment factor.

''(B) COMPLIANCE.—The Secretary shall be considered to have met the requirements of subparagraph (A)(ii) in any fiscal year if the costs funded by appropriations and allocated for the process for the review of animal drug applications—

''(i) are not more than 3 percent below the level specified in subparagraph (A)(ii); or

''(ii)(I) are more than 3 percent below the level specified in subparagraph (A)(ii), and fees assessed for the fiscal year following the subsequent fiscal year are decreased by the amount in excess of 3 percent by which such costs fell below the level specified in subparagraph (A)(ii); and

''(II) such costs are not more than 5 percent below the level specified in subparagraph (A)(ii).

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fees under this section—

''(A) $5,000,000 for fiscal year 2004;

''(B) $8,000,000 for fiscal year 2005;

''(C) $10,000,000 for fiscal year 2006;

''(D) $10,000,000 for fiscal year 2007; and

''(E) $10,000,000 for fiscal year 2008;

as adjusted to reflect adjustments in the total fee revenues made under this section and changes in the total amounts collected by animal drug application fees, supplemental animal drug application fees, animal drug sponsor fees, animal drug establishment fees, and animal drug product fees.

''(4) OFFSET.—Any amount of fees collected for a fiscal year under this section that exceeds the amount of fees specified in appropriations Acts for such fiscal year shall be credited to the appropriation account of the Food and Drug Administration as provided in paragraph (1), and shall be subtracted from the amount of fees that would otherwise be authorized to be collected under this section pursuant to appropriation Acts for a subsequent fiscal year.

''(h) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under subsection (a) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(i) WRITTEN REQUESTS FOR WAIVERS, REDUCTIONS, AND REFUNDS.—To qualify for consideration for a waiver or reduction under subsection (d), or for a refund of any fee collected in accordance with subsection (a), a person shall submit to the Secretary a written request for such waiver, reduction, or refund not later than 180 days after such fee is due.

''(j) CONSTRUCTION.—This section may not be construed to require that the number of full-time equivalent positions in the Department of Health and Human Services, for officers, employees, and advisory committees not engaged in the process of the review of animal drug applications, be reduced to offset the number of officers, employees, and advisory committees so engaged.

''(k) ABBREVIATED NEW ANIMAL DRUG APPLICATIONS.—The Secretary shall—

''(1) to the extent practicable, segregate the review of abbreviated new animal drug applications from the process for the review of animal drug applications, and

''(2) adopt other administrative procedures to ensure that review times of abbreviated new animal drug applications do not increase from their current level due to activities under the user fee program.''.

SEC. 4. ACCOUNTABILITY AND REPORTS.

(a) PUBLIC ACCOUNTABILITY.—

(1) CONSULTATION.—In developing recommendations to Congress for the goals and plans for meeting the goals for the process for the review of animal drug applications for the fiscal years after fiscal year 2008, and for the reauthorization of sections 739 and 740 of the Federal Food, Drug, and Cosmetic Act (as added by section 3), the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall consult with the Committee on Energy and Commerce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, appropriate scientific and academic experts, veterinary professionals, representatives of consumer advocacy groups, and the regulated industry.

(2) RECOMMENDATIONS.—The Secretary shall—

(A) publish in the Federal Register recommendations under paragraph (1), after negotiations with the regulated industry;

(B) present the recommendations to the Committees referred to in that paragraph;

(C) hold a meeting at which the public may comment on the recommendations; and

(D) provide for a period of 30 days for the public to provide written comments on the recommendations.

(b) PERFORMANCE REPORTS.—Beginning with fiscal year 2004, not later than 60 days after the end of each fiscal year during which fees are collected under part 4 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act, the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report concerning the progress of the Food and Drug Administration in achieving the goals identified in the letters described in section 2(3) of this Act toward expediting the animal drug development process and the review of the new and supplemental animal drug applications and investigational animal drug submissions during such fiscal year, the future plans of the Food and Drug Administration for meeting the goals, the review times for abbreviated new animal drug applications, and the administrative procedures adopted by the Food and Drug Administration to ensure that review times for abbreviated new animal drug applications are not increased from their current level due to activities under the user fee program.

(c) FISCAL REPORT.—Beginning with fiscal year 2004, not later than 120 days after the end of each fiscal year during which fees are collected under the part described in subsection (b), the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the implementation of the authority for such fees during such fiscal year and the use, by the Food and Drug Administration, of the fees collected during such fiscal year for which the report is made.

SEC. 5. SUNSET.

The amendments made by section 3 shall not be in effect after October 1, 2008, and section 4 shall not be in effect after 120 days after such date.

Mr. KENNEDY. Mr. President, I support the Animal Drug User Fee Act, and I urge my colleagues to support it. The bill is based on the current user fee programs for prescription drugs and medical devices, which are an effective way to enable the Food and Drug Administration to reduce its backlog and expedite its review of needed new products and make them available more quickly, especially in this time of accelerated discoveries of new drugs and other medical products with great potential to improve all aspects of health care. The same basic principle of user fees should be available to assist FDA's review of applications for approval of animal drugs.

In 5 years, the time it takes for FDA to review new animal drugs should be cut in half under this legislation. By increasing the resources available for these reviews, the user fees will speed new treatments to market for pets and farm animals alike. FDA will provide detailed reports on the program and its results in helping the agency to meet it performance goals, so that Congress can evaluate how it has worked and whether improvements are necessary when we reauthorize the program in the future.

We will also be able to work closely with the agency in implementing its important new plan for evaluating the increasingly urgent concern that the use or overuse of certain drugs in animals can lead to dangerous drug-resistant strains of organism in humans.

I commend Chairman GREGG, Senator ENSIGN, and Senator HARKIN for their leadership on this legislation, and I look forward to working with them on these issues in the months ahead.

Mr. FRIST. I ask unanimous consent that the Senate concur in the House amendment, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

MEASURE PLACED ON THE CALENDAR—S. 1832

Mr. FRIST. I understand there is a bill at the desk that is due for a second reading.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1832) entitled the ''Senator Paul Wellstone Mental Health Equitable Treatment Act of 2003.''

Mr. FRIST. I object to further proceedings on the measure at this time.

The PRESIDING OFFICER. The objection is heard.

The bill will be placed on the calendar.

SENATE ACCOMPLISHMENTS

Mr. FRIST. Mr. President, although we did not have any rollcall votes today, I do want to assure my colleagues we made progress on the Internet tax moratorium bill. I understand there are serious negotiations that are continuing and that we hope we can get an agreement on that legislation and finish it at the earliest time.

Earlier this week, we passed H.R. 3289, the Iraq-Afghanistan appropriations conference report, and that measure has now been signed into law by the President of the United States.

We also adopted the Agriculture appropriations bill, as well as the Interior appropriations conference report this week. The Interior appropriations bill will now be sent to the President for his signature.

Chairman SHELBY, working with many Members on both sides of the aisle, finished work on the fair credit reporting bill. The bill had overwhelming support, and it is expected that a conference report will return in short order.

This week the Senate also passed H.R. 3365, the military tax fairness bill. This bill, which is also called the Fallen Patriots Tax Relief Act, will assist members of our Armed Forces in providing some much needed clarity and fairness with respect to tax policy.

We also reauthorized, this week, the School Lunch and Child Nutrition Program. Chairman COCHRAN brought this bill to our attention, and we were able to act quickly. I mention it today to show that we continue to try to do our work efficiently and to make progress on a number of important issues. This bill cleared both sides and will become law. Senator COLLINS, as chairman of the Governmental Affairs Committee, cleared S. 589, the Homeland Security Federal Workforce Act. This bill will promote job retention in areas of national security by providing student loan payments.

These are just a few of the areas, and I think very good examples, where we can continue to work together in a collaborative way.

The remaining weeks of business will be difficult. There will be many contentious issues to address as we go forward. The American people clearly want us to get our work done. They expect us to get our work done.

As I mentioned earlier, we are aiming for this target date of November 21.

ORDERS FOR MONDAY, NOVEMBER 10, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 1 p.m., Monday, November 10. 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 then begin consideration of H.R. 2799, the Commerce-State-Justice appropriations bill, as provided under the previous order.

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

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, we feel part of the accomplishments of this Senate. But for our cooperation and hard work, we would not have accomplished as much as we have. Earlier in this week we did some very good things and we produced a lot of work.

We cannot undue what has been done—feelings hurt, feelings of concern—as to why we are in the present position, but it has happened. We cannot undue that, I guess.

But I say to the distinguished majority leader, it is too bad we are in this position because I really could see the light at the end of that tunnel. It is very blurred today.

I hope we can finish our work. There is so much we all have to do in our respective States. But I just want to tell the leader that the long list of work that we did was a joint accomplishment. I know the leader acknowledges that. I just hope, somehow, next week, with the 30 hours that have been placed in our path, we could still work our way through all this and be more productive than I see the time ahead of us.

The PRESIDING OFFICER. Without objection, the request is agreed to.

Mr. FRIST. Mr. President, before we close I need just a couple minutes in case we can do one more brief piece of business, and then we will close very shortly.

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. 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 AGREEMENT—EXECUTIVE SESSION

Mr. FRIST. Mr. President, I ask unanimous consent that during an executive session beginning next Wednesday, each hour beginning on the hour of the executive session be equally divided between the two leaders or their designees and that any time not used by either side during the designated hour be given to the other side of the aisle.

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

Mr. REID. Mr. President, it is my understanding, just so there is no confusion, that this is no time agreement on

a specific nominee. We are just going to be talking about judges for that extended period of time.

Mr. FRIST. Mr. President, that is my understanding.

Mr. REID. No objection.

PROGRAM

Mr. FRIST. Mr. President, for the information of all Senators, on Monday the Senate will begin debate on H.R. 2799, the Commerce-Justice-State appropriations bill. The bill managers will be here on Monday to work through any amendments to the bill. We will be debating and voting on amendments throughout the afternoon. Senators who have amendments are asked to contact the bill managers as soon as possible.

As you have heard, there are a number of other issues we will be addressing early next year. The Syria Accountability Act, the Military Constructions appropriations conference report, the Department of Defense authorization conference report, the Energy and Water appropriations conference report, and VA–HUD appropriations bill, as well as other items that are cleared for action.

We will be in session every day next week—Monday, Tuesday, Wednesday, Thursday, and Friday. We have a lot of business to do, and it requires that for us to complete the business.

ADJOURNMENT UNTIL 1 P.M., MONDAY, NOVEMBER 10, 2003

Mr. FRIST. 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 3:55 p.m., adjourned until Monday, November 10, 2003, at 1 p.m.

NOMINATIONS

Executive nominations received by the Senate November 7, 2003:

NATIONAL SECURITY EDUCATION BOARD

KIRON KANINA SKINNER, OF PENNSYLVANIA, TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF FOUR YEARS, VICE HERSCHELLE S. CHALLENOR.

DEPARTMENT OF LABOR

STEVEN J. LAW, OF THE DISTRICT OF COLUMBIA, TO BE DEPUTY SECRETARY OF LABOR, VICE DONALD CAMERON FINDLAY, RESIGNED.

UNITED STATES INSTITUTE OF PEACE

J. ROBINSON WEST, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 2007, VICE MARC E. LELAND, TERM EXPIRED.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 7, 2003:

FEDERAL ENERGY REGULATORY COMMISSION

JOSEPH TIMOTHY KELLIHER, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR THE TERM EXPIRING JUNE 30, 2007.

SUEDEEN G. KELLY, OF NEW MEXICO, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 30, 2004.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.