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Senate

The Senate met at 9:31 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, the Reverend R.J. Barber, of Danville, VA.

PRAYER

The guest Chaplain offered the following prayer:

Eternal God, our Heavenly Father, we come to You in solemn prayer as our Senate opens its deliberations for this day. We express our deep gratitude for the unmeasured blessings You have bestowed upon this Nation. We honor our Founding Fathers whose sacrifice and wisdom birthed this Nation under Your divine guidance. We marvel at the unbroken success of this experiment in democracy.

We bow in gratitude for the protection of Your Almighty hand through all of our wars, from Valley Forge to Baghdad. We thank You for the men and women, both past and present, who have served so nobly in our Armed Forces. We ask Your comfort for all of the families who have suffered in our latest war.

Where we have broken Your commandments, forgive us. Lead us in the uncharted waters of the future. Guard our hearts from pride. As we face the great issues of our time, may we be mindful of Your holy laws and our accountability to You, our righteous Judge. May You guide the deliberations of this body. May we seek to do justice and walk humbly with our God. Long may our land be bright with freedom's holy light; protect us by Thy might, great God, our King. All of these favors and blessings we ask in the name of our Lord. 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 Chair recognizes the majority leader.

SCHEDULE

Mr. FRIST. Mr. President, momentarily we will be voting on passage of the resolution of ratification for a historic treaty. Members are gathering now for this important vote. Therefore, I will defer my comments on today's schedule until later.

At this time we will proceed with the final remarks prior to the vote.

ORDER FOR RECESS

Mr. FRIST. Mr. President, I ask unanimous consent that following this vote, the Senate stand in recess subject to the call of the Chair in order for Members to greet our guests.

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

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NATO EXPANSION TREATY

The PRESIDENT pro tempore. Under the previous order, the Senate will go into executive session to consider Executive Calendar No. 6, which the clerk will report.

The assistant legislative clerk read as follows:

Resolution of Ratification to Accompany Treaty Document No. 108–4, Protocols to the North Atlantic Treaty of 1949 on Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia.

The PRESIDENT pro tempore. Under the previous order, the chairman of the Foreign Relations Committee is recognized prior to the vote on the resolution of ratification.

Mr. LUGAR. Mr. President, the Senate comes together this morning to ratify the accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia to the NATO alliance. It will be a truly historic vote in the Senate and a most important day in the histories of these nation-states. I am hopeful the Senate will support overwhelmingly this remarkable foreign policy initiative.

When President Bush made his first trip to Warsaw Europe 2 years ago, he strongly voiced in his Warsaw address the U.S. commitment to Europe generally and to NATO in particular. Now, at a moment when relations with some of our European allies are strained, a clear showing of bipartisan support for NATO enlargement takes on added importance. The affirming message of the first round of enlargement led to improved alliance capabilities and strengthened transatlantic ties. I am confident that this second round will do the same. The eyes of a hopeful and expectant world are upon us. I ask my colleagues to join me in voting for this resolution of ratification.

I would like to direct the attention of Senators to the balcony above where we are joined today by the Foreign Ministers of the seven aspirant states. They have come together with us today to witness our actions and to join with us on the Senate floor at the completion of the vote. At noon they will be hosted by the Secretary of State for lunch at the State Department and later by President Bush at a Rose Garden ceremony. Their presence, here today, is a personal witness to the close relationship our nations will enjoy as partners in the NATO Alliance.

I thank Senators for their cooperation and ask for their support of the enlargement of the NATO allliance .

The PRESIDENT pro tempore. The Senator from Delaware.

Mr. BIDEN. Mr. President, it is fitting on this day, which is the 58th anniversary of VE Day, the victory over Nazi tyranny in Europe, that the Senate is about to vote to admit seven countries that suffered under that tyranny and the tyranny of Communism—Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia—all of which have their Ambassadors present today and are very welcome.

His Holiness Pope John Paul the II and President Reagan should be thanked for having hastened the fall of Communism in Europe. President George H.W. Bush should be thanked for the unification of Germany, and our President Bush for having widened the circle of the current round of NATO enlargement, and President Clinton, who skillfully led the way to the path-breaking last round of enlargement which moved NATO into formerly Communist Central Europe.

Today is a culmination of the work of a number of great men and women. I am just happy to be able to play a little tiny part.

I urge everyone to vote, which I am confident they will, for accession.

Mr. REED. Mr. President, I join my colleagues on both sides of the aisle to express my support for the ratification of the protocols to the North Atlantic Treaty of 1949 on the accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia.

NATO has been perhaps the most successful military alliance in history, ensuring the peace and security of Europe for over fifty years. I believe these seven countries will not only benefit immeasurably from their inclusion in NATO, but they will all serve to further strengthen the alliance in ways that we could not have imagined in 1949. Though they are all fledgling democracies, they bring with them a zeal for the democratic process that we all share.

In 1997, I had concerns about admitting the last three nations into NATO—Hungary, Poland, and the Czech Republic. I had significant concerns about the cost we as a nation might incur by allowing these countries with immature political and social structures and outdated militaries to enter the alliance. But time has proven that these costs are less than we imagined, and I believe that the cost required to bring these next seven nations into the alliance should be well worth the investment.

At the same time, I continue to have reservations about the likelihood of true interoperability with these seven new nations. These seven nations use military hardware that is a product of the Soviet armed forces, and it is rapidly reaching the end of its useful life. Very little of this equipment is compatible with the latest hardware, weapons, and ammunition currently utilized by the United States. The militaries of the seven new nations are also top heavy with senior officers who were trained under the old Soviet regime. As with the ground forces, their air forces are also products of the Soviet era, and are greatly outdated. Finally, interoperability within the communications arena will be extremely challenging, at best, until these militaries become proficient in English.

Despite these misgivings, I still believe that we should admit these seven nations into the NATO alliance. The NATO alliance ensured victory in the Cold War and has preserved the peace in Europe for over fifty years. But in order to survive for the next fifty years, the alliance must be willing to make much-needed changes to its charter. I support the Warner-Levin-Roberts amendment and its two major provisions that the President of the United States placed on the agenda at the North Atlantic Council. First, I agree that we must eliminate the ''consensus rule,'' the antiquated requirement in the NATO charter that nearly prevented NATO from protecting one of its own members, Turkey, before the commencement of Operation Iraqi Freedom. This rule may have worked when the alliance was first formed in 1949 with its original 12 members, but it cannot work any longer. Secondly, I support the need for a new rule in NATO that authorizes the members of the alliance to suspend the membership of any country in NATO which no longer supports the ideals of the alliance. The recent refusal of support on the part of some of our NATO allies during the build-up for and execution of Operation Iraqi Freedom has again shown the need for such a change. Only with these two critical steps will NATO continue to thrive and be as critical to peace and security in the 21st Century as it was in the 20th Century.

Mr. JEFFORDS. Mr. President, I will vote today to provide advice and consent to the ratification of the Protocols to the North Atlantic Treaty of 1949, approving accession to the treaty by Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia.

While I will vote for this resolution of ratification, I do so with deep concerns over the future of NATO and its ability to serve as an effective military alliance. Five years ago, I voted against expanding NATO to include Poland, Hungary and the Czech Republic. I did so, in part, because of a belief that there was no logical end point once NATO began to expand. I was worried at that time that an expanded NATO would become unwieldy and lose focus on its primary mission as a defensive military alliance. Those fears continue today, magnified by the realities associated with seven additional members. However, having decided in 1998 to admit Poland, Hungary and the Czech Republic, there is little reason for the United States to reject the current round of NATO aspirants. Based on the logic of this latest round of expansion, I assume that this trend will continue, and that new members will be added in coming years as they meet NATO criteria, with the ultimate composition of the alliance becoming extremely diverse.

I am greatly concerned that the inclusion of 10 new NATO members over the past 5 years demonstrates that the United States and its original NATO Allies are wavering from the original purpose of the alliance. Throughout the cold war, the alliance presented a unified front, functioning as an efficient, credible deterrent to aggression. With the radical expansion of alliance membership by over 50 percent since 1998, the alliance has jeopardized its ability to act decisively in times of crisis. I am concerned that the alliance has expanded to the point of becoming inefficient and unwieldy. It runs the risk that divergent views will lead to paralysis or, worse yet, irrelevance when action is required.

The United States and Europe already have the Organization for Security and Cooperation in Europe to handle concerns related to promoting security in Europe, and there are several other organizations directed toward trade and the resolution of other political issues. I am concerned that an expanded NATO will be more suitable for discussion than action, and history has unfortunately shown that action is sometimes required. I continue to believe that the original decision in 1998 to expand NATO was a mistake, but reluctantly agree to accession by these seven countries.

Mr. LAUTENBERG. Mr. President, today will go down as a remarkable day in the history of world diplomacy. I enthusiastically support the passage of Treaty Document No. 108–04, the Resolution of Ratification to the Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia.

We are seizing a remarkable opportunity to extend the democratic zone of security, stability, tranquility, and mutual assistance eastward. I welcome the seven aspirant countries, and commend their efforts since the fall of their communist regimes 12 years ago to embrace democratic governance and liberal economic policies.

I urge the adoption of the Resolution of Ratification because I believe that NATO expansion will bring positive security benefits to the United States. Sovereign states no longer pose the greatest threats to U.S. national security; transnational actors—terrorists groups and their networks of supporters do. I believe that the war on terrorism will only be won through effective cooperation between the U.S. and our allies around the world. Since 9/11, our NATO allies have helped tremendously in our attempt to thwart terrorist attacks here and abroad. The NATO accession of Bulgaria, Estonia,

Latvia, Lithuania, Romania, Slovakia, and Slovenia will solidify the cooperation that already exists bilaterally between the U.S. and these seven countries.

I do have one concern that I would like to mention: the rights of the large historic Hungarian minorities in Slovakia and Romania. I urge both countries' governments to continue to work with their Hungarian communities to resolve property restitution disputes and other contentious issues. And I urge the governments of all seven countries to pay continued attention to human rights so that all of their citizens may enjoy the benefits that accession to NATO will bring.

I extend a special welcome to the distinguished Foreign Ministers and Ambassadors who have come to the Senate Chamber today from each of the seven countries. I welcome them to a crucial alliance, one that was formed in the wake of World War II to protect freedom and democracy, human rights, and rule of law through the combined strength of western military, intelligence, economic, and political assets.

Mr. President, today's vote gives me great optimism about the future of our NATO alliance and about the contributions that these seven newest members will make for our collective peace, stability, freedom, and prosperity.

Ms. MIKULSKI. Mr. President, I rise in support of ratification of the Protocol to the Washington Treaty to bring seven new members in the NATO alliance.

Allies and partners make concrete and indispensable contributions to American national security in the complex and rapidly-changing post-cold war environment. Most security problems cannot be addressed unilaterally, and acting with others helps reduce the backlash against the United States. We are virtually always better off sharing the risks and burdens and costs with our allies. The NATO alliance has been a reliable cornerstone of America's national security since it was founded more than half a century ago.

I believe we need to modernize and strengthen NATO as our key alliance in the 21st century. We need to do four things to make NATO stronger:

First, we need to overcome differences over Iraq and other issues by working together to develop a common understanding of the threats we face, so we don't again face the challenge of NATO Allies refusing access to U.S. troops or denying protection to another ally.

Second, our European partners need to modernize their military capabilities to be ready to take on any potential enemy or military task, and to ensure interoperability between U.S. and European forces.

Third, NATO must be ready to act beyond Europe, because our common enemies and shared missions could be anywhere.

Finally, NATO must be ready to fight new enemies rather than just conventional military forces. These threats include the proliferation of weapons of mass destruction and missiles, rogue states and ethnic conflicts, and terrorism.

The limited debate and sparse opposition to further enlargement of NATO are a tribute to the success of the round of NATO enlargement we ratified in 1996. Poland, Hungary and the Czech Republic are full and reliable NATO allies. They have already contributed to America's security, joining in the unanimous invocation of article 5 of the Washington Treaty, that an attack on one is an attack on all, after terrorists attacked the United States on September 11 of 2001.

Poland, Hungary and the Czech Republic are being fully integrated into Europe including membership in the European Union. But they understand the value of the trans-Atlantic alliance.

I am particularly proud that Poland is always ready to stand with America. Poland sent ground forces for the war in Iraq, joining only two other allies: the United Kingdom and Australia.

I strongly support NATO membership for the three Baltic states: Estonia, Latvia and Lithuania. These countries know freedom and are willing to fight for it, because they suffered so long under Soviet occupation. The Baltic states are working to help America confront new challenges now that the cold war is over.

I had the opportunity to visit Estonia, Latvia and Lithuania a few years ago, and participate in the NATO parliamentary assembly meeting in Vilnius. I was truly impressed by the spirit and progress of the Estonian, Lithuanian and Latvian peoples. All three Baltic states are building modern armed forces to contribute to the security of NATO.

I am particularly proud of the Maryland-Estonia partnership, under which the Maryland National Guard has helped organize and train Estonia's military. All three Baltic states have contributed to the war on terrorism and international peacekeeping missions.

I urge my colleagues to join me in support of further enlargement of NATO. I believe this round of enlargement, like the last, will strengthen NATO. Strengthening NATO strengthens America's national security.

Mr. EDWARDS. Mr. President, I rise in strong support of NATO's expansion and the ratification of the Treaty before us. For more than 50 years, the alliance has been the cornerstone of the U.S.-European relationship, and I believe that NATO remains our most important alliance. NATO's enlargement is critical to ensuring its continuing relevance in the 21st century.

With the inclusion of 7 new members—Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia—NATO shows its commitment to establishing partnerships with its former adversaries and expanding the zone of freedom and security from Europe's West to Europe's East. Enlargement enables these countries to complete the journey they began with the end of Soviet communism, a journey that will make them part of a Europe that is whole, free and at peace.

With this step, we also come closer to completing the vision outlined by President Bill Clinton nearly a decade ago. In January 1994, President Clinton first described the enlargement of NATO as one of not ''whether but when.'' Thanks to his strong leadership, Poland, Hungary and the Czech Republic joined the alliance in 1999, and NATO developed a new relationship with Russia. President George W. Bush deserves credit for continuing his predecessor's policies.

I am deeply committed to NATO. A year ago, I voted in favor of the Freedom Consolidation Act, which stressed the importance of NATO and endorsed taking the step of enlargement. And last December, I went to NATO headquarters in Brussels and met with senior alliance officials, including Lord George Robertson, the superb NATO Secretary General; General Joe Ralston, then-NATO's military commander; our excellent U.S. Ambassador to NATO, Nick Burns; and several of his fellow NATO Ambassadors. I also visited London, where I met with the leader of one of our closest NATO allies, the United Kingdom's Tony Blair.

In all of these discussions, we agreed that bringing these deserving countries into NATO was critical to making the alliance stronger. But we also agreed that enlargement was only the first step—and in some ways, that it might prove to be the easiest. This is remarkable, especially when considering how contentious the issue of NATO enlargement was less than half a decade ago, not only here in the Senate, but around the world.

For NATO to continue to be a strong alliance, its members must meet at least two challenges. First, NATO members must close the gap in their military capabilities, and second, we must work to orient NATO toward new missions.

The Europeans understand that in terms of military spending and modernization, they are just not keeping up. A big part of the problem is budgetary. Last year the U.S. spent twice as much on defense than every other NATO member combined. The $48 billion increase in military spending that Congress appropriated after the September 11, 2001, attacks was itself twice as much as Germany's entire defense budget.

Everyone at NATO understands the problem. Lord Robertson repeatedly warns about it, but the question is whether our European partners can muster up the creativity and political will to get the job done. Since I believe that it is in the U.S. security interest

to work more, not less, with our European partners, it is obvious that our partners need to be strong and capable of working with the United States.

Beyond the issue of capabilities, NATO's members face an even more fundamental question: What is NATO's purpose? My answer is this: If NATO's cold war mission was to keep the peace in Europe, the real point of the Transatlantic security relationship in the 21st century is what we can do together outside of Europe. This includes addressing threats like terrorism, the proliferation of weapons of mass destruction, and pandemics like HIV/AIDS. And it includes acting in places that NATO planners have considered ''out of area'': the Middle East, South and Central Asia, and Africa. The bottom line is that neither the United States nor Europe can tackle any of these problems alone. We need each other, and to neglect natural building blocks like NATO simply does not make any sense.

Over the past 2 years, NATO has made historic strides in addressing these new threats. Following the September 11 attacks, NATO Allies came together and, for the first time, invoked the alliance's self defense clause. NATO partners are on the ground today in Afghanistan. Later this year, the alliance itself will assume command of the international security force in Afghanistan.

I also believe that NATO can and should play a central role in providing security in a postwar Iraq. We all know that many NATO members were deeply divided over the issue of what to do about Iraq. But now that the war is over, I believe that we have an opportunity to reaffirm NATO's importance and relevance—as well as America's commitment to the Alliance—by looking for ways to include NATO in providing security today in Iraq. Doing so would not only lend credibility to America's efforts in Iraq, but over the coming months and years ease the burden on the American people. This is a test, a test not just for NATO but for American leadership in NATO.

This is not the first time America's leadership in NATO has been tested. In fact, the question of whether or not to enlarge NATO was a test of American leadership, and with our vote today, we will have met that test. Now, I believe we have to show the same sense of commitment and resolve to help NATO meet the new challenges we face in Iraq and elsewhere.

The PRESIDENT pro tempore. The Chair recognizes the minority leader.

Mr. DASCHLE. Mr. President, I commend Senators LUGAR and BIDEN for their historic achievement this morning. This has been an effort that has enjoyed strong bipartisan support within our country and within the Senate. I commend them especially for their remarkable leadership in bringing us to this point.

I also welcome the Foreign Ministers and Ambassadors who join us on this momentous occasion from Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia. I welcome them to NATO; I welcome them here. This is truly a historic day.

We continue today what we did on VE Day, now more than 50 years ago, what thousands of our GIs, including my father, started more than 60 years ago with the landing at Normandy, the creation of a Europe that is whole and that is free.

This is the beginning of a partnership that will produce greater world stability, greater international involvement in world affairs, and a partnership with countries that will increasingly become valuable partners and allies of the United States.

Expanding NATO to include these seven democracies will make NATO stronger and the United States safer.

Five years ago we undertook to expand NATO for the first time. At that time, the debate hung on this critical question: Should NATO limit its mission to defending a fixed list of nations, selected more than 50 years ago, against an enemy that no longer existed? Or does it exist to provide a collective security umbrella armed to defend an alliance of free countries—countries that have demonstrated not only a deep commitment to democracy, but a willingness to defend it?

A strong, bipartisan majority answered that question by voting to enlarge NATO to meet the threats of a new world. The results of that decision did not disappoint.

On September 12, 2001, for the first time in its history, NATO invoked Article 5, and mobilized to defeat the threat of terrorism. NATO aircraft patrolled American skies and later this summer NATO will take over control of the Security Force in Afghanistan. Today we have the opportunity to take the next step and strengthen NATO yet again.

Each of the seven countries seeking to join our alliance has made the democratic reforms that inclusion in NATO demands. We could not have made this contention 15 years ago. But due to the foresight and perseverance of the citizens of each of these countries, Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia are all today strong democracies.

Emerging from a history of foreign occupation, and defending themselves against the threats of corruption and organized crime, these nations have affirmed their commitment to democracy both in word and in deed. They have earned the right to be members of NATO. With that right, comes a responsibility, and they have shown a willingness to meet that responsibility.

Each has contributed to the peacekeeping missions in the Balkans. Each contributed to Operation Enduring Freedom in Afghanistan and Operation Iraqi Freedom. Each has contributed to the International Security Assistance Force in Afghanistan and have pledged contributions for the reconstruction of Iraq.

As important as our shared values are, NATO remains, at its core, a defensive alliance.

As such, the forces of alliance members must remain capable of defending against a significant military threat—in Europe and beyond.

At Prague, NATO members pledged to transform NATO to make it better able to address the threats we face now.

Gone are the days of defending the Fulda Gap in the heart of Europe. Now we must be ready to counter the elusive and ever-present threat of terrorism, and the proliferation of weapons of mass destruction far outside the borders of Europe.

Each of our new partners will bring specialized capabilities to the alliance.

In Iraq, Afghanistan, and the Balkans, we have seen first-hand the expertise of Bulgarian and Slovak antinuclear, biological, and chemical weapons teams; Slovenian de-mining units; and Romanian mountain troops.

We will continue to draw on their skills as we carry forward our efforts to defeat terror and restore stability to Afghanistan and Iraq.

The addition of new members amplifies the need to close the disparities between the United States and our Allies.

We are encouraged by our new members ''niche capabilities.'' But the differences between the United States and its NATO Allies in transport, logistics, communications, and intelligence capabilities risk undercutting the alliance.

As we take this momentous step today—of extending the NATO security guarantee to seven new countries stretching from the Baltic to the Black Sea—we remind our friends, new and old, of their responsibility to invest in the capabilities of our brothers in arms.

We also must not permit periodic disagreements to erode the common cause that has made NATO the most successful military alliance in history.

The feud in the North Atlantic Council over how to aid Turkey in the event of an attack by Iraq exposed serious divisions in NATO. Subsequent discussion of a EU-based security arrangement as an alternative to NATO does little to ease those divisions.

These are not insurmountable challenges, but this alliance, like our key alliances in Asia, demand communication, attention, and diplomacy.

Handled correctly, this new and newly energized NATO can play a central role in post-Saddam Iraq—a role that can ease the burden on America's troops and American taxpayers.

I am proud to cast my vote for this resolution on the anniversary of one of our Nation's most glorious achievements—V–E Day, May 8.

My father was an Army sergeant in World War II. He landed on the beaches of Normandy with the 6th Armored Division on ''D Plus 1''—June 7, 1944.

One of his many duties was getting word back to the States about the dead

and missing so their families could be notified. That experience left him with a profound respect for the sacrifices democracy sometimes demands. It is a lesson he passed on to his four sons.

He taught my brothers and me another lesson: When you make a promise, you keep it.

With this vote, the United States makes a promise—a promise to protect our Allies, old and new, from any threat that may emerge in the years to come.

In return, we expect their wholehearted commitment to stand with us to continue the push for a Europe, whole and free. That effort began over 60 years ago with the blood and effort of soldiers like my father. By advancing their cause, this treaty honors their sacrifice.

I yield the floor.

The PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, 6 months ago, I traveled to Prague to support and bear witness to the historic decision of President Bush and the leaders of the Atlantic alliance to invite seven countries to join NATO. Today, on the 58th anniversary of Victory in Europe Day, the United States will vote to ratify in this Senate that vision of a free Europe, stretching from the Baltic Sea to the Black Sea.

I commend the chairman of the Foreign Relations Committee, Senator LUGAR, and the ranking member, Senator BIDEN, for their efforts to support this goal. I also thank the Democratic leader, Senator DASCHLE, for helping to make this happen.

In the few years I have been in Washington and in my few short months as majority leader of the Senate, I have seen few ideas that are so untroubled by political differences, that so united the Senate and the Nation, and that so completely fortified the very foundation of our liberty—that democratic government shall be defended and that freedom shall prevail.

These are exhilarating times in which we live. In just over a dozen years, we have seen the collapse of the Soviet Union, the freeing of captive nations, the collapse and defeat of tyrannical dictatorships, and the birth of new democracies across Europe, Latin America, the Middle East, Africa, and Asia. Each of these victories for freedom has been hard fought and each is worthy of defending.

It should be instructive to us that all seven of these soon-to-be NATO Allies were already on our side in the recent fight to liberate Iraq because they had to fight for their own liberation. They understand that freedom is not free.

It has often been said that during the long years of the cold war, America's example inspired Europe's freedom fighters, but to many of us, it is their example which is truly inspiring. To those from the ranks of Europe's new democracies who watch this morning as we cast our votes on this important treaty, I say: Thank you for your example and thank you for your inspiration.

Mr. President, I ask for the yeas and nays on the resolution of ratification.

The PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the resolution of ratification, as amended. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Alaska (Ms. MURKOWSKI) is necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. CARPER), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY) would vote ''aye''.

The yeas and nays resulted—yeas 96, nays 0, as follows:

[Rollcall Vote No. 142 Ex.]

YEAS—96

Akaka	Dodd	Lincoln
Alexander	Dole	Lott
Allard	Domenici	Lugar
Allen	Dorgan	McCain
Baucus	Durbin	McConnell
Bayh	Edwards	Mikulski
Bennett	Ensign	Miller
Biden	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Fitzgerald	Nickles
Breaux	Frist	Pryor
Brownback	Graham (FL)	Reed
Bunning	Graham (SC)	Reid
Burns	Grassley	Roberts
Byrd	Gregg	Rockefeller
Campbell	Hagel	Santorum
Cantwell	Harkin	Sarbanes
Chafee	Hatch	Schumer
Chambliss	Hollings	Sessions
Clinton	Hutchison	Shelby
Cochran	Inhofe	Smith
Coleman	Inouye	Snowe
Collins	Jeffords	Specter
Conrad	Johnson	Stabenow
Cornyn	Kerry	Stevens
Corzine	Kohl	Sununu
Craig	Kyl	Talent
Crapo	Landrieu	Thomas
Daschle	Lautenberg	Voinovich
Dayton	Leahy	Warner
DeWine	Levin	Wyden

NOT VOTING—4

Carper	Lieberman
Kennedy	Murkowski

The PRESIDENT pro tempore. Two-thirds of the Senators present having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification agreed to is as follows:

Protocols to North Atlantic Treaty of 1949 on Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia (Treaty Doc. 108–4)

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO DECLARATIONS AND CONDITIONS

The Senate advises and consents to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia (as defined in section 4(6)), which were opened for signature at Brussels on March 26, 2003, and signed on behalf of the United States of America and other parties to the North Atlantic Treaty, subject to the declarations of section 2 and the conditions of section 3.

SEC. 2. DECLARATIONS

The advice and consent of the Senate to ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia is subject to the following declarations:

(1) Reaffirmation that United States membership in NATO remains a vital national security interest of the United States. The Senate declares that

(A) for more than 50 years the North Atlantic Treaty Organization (NATO) has served as the preeminent organization to defend the countries in the North Atlantic area against all external threats;

(B) through common action, the established democracies of North America and Europe that were joined in NATO persevered and prevailed in the task of ensuring the survival of democratic government in Europe and North America throughout the Cold War;

(C) NATO enhances the security of the United States by embedding European states in a process of cooperative security planning, by preventing the destabilizing re-nationalization of European military policies, and by ensuring an ongoing and direct leadership role for the United States in European security affairs;

(D) the responsibility and financial burden of defending the democracies of Europe and North America can be more equitably shared through an alliance in which specific obligations and force goals are met by its members;

(E) the security and prosperity of the United States is enhanced by NATO's collective defense against aggression that may threaten the security of NATO members;

(F) with the advice and consent of the United States Senate, Hungary, Poland, and the Czech Republic became members of NATO on March 12, 1999;

(G) on May 17, 2002, the Senate adopted the Freedom Consolidation Act of 2001 (S. 1572 of the 107th Congress), and President George W. Bush signed that bill into law on June 10, 2002, which ''reaffirms support for continued enlargement of the North Atlantic Treaty Organization (NATO) Alliance; designates Slovakia for participation in the Partnership for Peace and eligible to receive certain security assistance under the NATO Participation Act of 1994; [and] authorizes specified amounts of security assistance for [fiscal year] 2002 for Estonia, Latvia, Lithuania, Slovakia, Slovenia, Bulgaria and Romania''; and

(H) United States membership in NATO remains a vital national security interest of the United States.

(2) Strategic rationale for NATO enlargement. The Senate finds that

(A) notwithstanding the collapse of communism in most of Europe and the dissolution of the Soviet Union, the United States and its NATO allies face threats to their stability and territorial integrity;

(B) an attack against Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, or Slovenia, or their destabilization arising from external subversion, would threaten the stability of Europe and jeopardize vital United States national security interests;

(C) Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, having established democratic governments and having demonstrated a willingness to meet all requirements of membership, including those necessary to contribute to the defense of all NATO members, are in a position to further the principles of the North Atlantic Treaty and to contribute to the security of the North Atlantic area; and

(D) extending NATO membership to Bulgaria, Estonia, Latvia, Lithuania, Romania,

Slovakia, and Slovenia will strengthen NATO, enhance security and stability in Central Europe, deter potential aggressors, and advance the interests of the United States and its NATO allies.

(3) Full membership for new NATO members. The Senate understands that Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, in becoming NATO members, will have all the rights, obligations, responsibilities, and protections that are afforded to all other NATO members.

(4) The importance of European integration.

(A) Sense of the Senate. It is the sense of the Senate that

(i) the central purpose of NATO is to provide for the collective defense of its members;

(ii) the Organization for Security and Cooperation in Europe is an institution for the promotion of democracy, the rule of law, crisis prevention, and post-conflict rehabilitation and, as such, is an essential forum for the discussion and resolution of political disputes among European members, Canada, and the United States; and

(iii) the European Union is an essential organization for the economic, political, and social integration of all qualified European countries into an undivided Europe.

(B) Policy of the United States. The policy of the United States is

(i) to utilize fully the institutions of the Organization for Security and Cooperation in Europe to reach political solutions for disputes in Europe; and (ii) to encourage actively the efforts of the European Union to continue to expand its membership, which will help to strengthen the democracies of Central and Eastern Europe.

(5) Future consideration of candidates for membership in NATO.

(A) Senate findings. The Senate finds that

(i) Article 10 of the North Atlantic Treaty provides that NATO members by unanimous agreement may invite the accession to the North Atlantic Treaty of any other European state in a position to further the principles of the North Atlantic Treaty and to contribute to the security of the North Atlantic area;

(ii) in its Prague Summit Declaration of November 21, 2002, NATO stated that the Alliance

(I)(aa) will keep its door open ''to European democracies willing and able to assume the responsibilities and obligations of membership, in accordance with Article 10 of the Washington Treaty'';

(bb) will keep under review through the Membership Action Plan (MAP) the progress of those democracies, including Albania, Croatia, and the Former Yugoslav Republic of Macedonia, that seek NATO membership, and continue to use the MAP as the vehicle to measure progress in future rounds of NATO enlargement;

(cc) will consider the MAP as a means for those nations that seek NATO membership to develop military capabilities to enable such nations to undertake operations ranging from peacekeeping to high-intensity conflict, and help aspirant countries achieve political reform that includes strengthened democratic structures and progress in curbing corruption;

(dd) concurs that Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have successfully used the MAP to address issues important to NATO membership; and

(ee) maintains that the nations invited to join NATO at the Prague Summit ''will not be the last'';

(II)(aa) in response to the terrorist attacks on September 11, 2001, and its subsequent decision to invoke Article 5 of the Washington Treaty, will implement the approved ''comprehensive package of measures, based on NATO's Strategic Concept, to strengthen our ability to meet the challenges to the security of our forces, populations and territory, from wherever they may come''; and

(bb) recognizes that the governments of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have successfully used the MAP to address important issues and have showed solidarity with the United States after the terrorist attacks on September 11, 2001;

(III) will create ''. . . a NATO Response Force (NRF) consisting of a technologically advanced, flexible, deployable, interoperable, and sustainable force including land, sea, and air elements ready to move quickly to wherever needed, as decided by the Council'';

(IV) will streamline its ''military command arrangements'' for ''a leaner, more efficient, effective, and deployable command structure, with a view to meeting the operational requirements for the full range of Alliance missions'';

(V) will ''approve the Prague Capabilities Commitment (PCC) as part of the continuing Alliance effort to improve and develop new military capabilities for modern warfare in a high threat environment''; and

(VI) will ''examine options for addressing the increasing missile threat to Alliance territory, forces and populations centres'' and tackle the threat of weapons of mass destruction (WMD) by enhancing the role of the WMD Centre within the International Staff;

(iii) as stated in the Prague Summit Declaration, Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have ''demonstrated their commitment to the basic principles and values set out in the Washington Treaty, the ability to contribute to the Alliance's full range of missions including collective defence, and a firm commitment to contribute to stability and security, especially in regions of crisis and conflict'';

(iv) Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have been acting as de facto NATO allies through their contributions and participation in peacekeeping operations in the Balkans, Operation Enduring Freedom, and the International Security Assistance Force (ISAF);

(v) Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, together with Albania, Croatia, and the Former Yugoslav Republic of Macedonia, issued joint statements on November 21, 2002, and February 5, 2003, expressing their support for the international community's efforts to disarm Iraq; and

(vi) the United States will not support the accession to the North Atlantic Treaty of, or the invitation to begin accession talks with, any European state (other than Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia), unless

(I) the President consults with the Senate consistent with Article II, section 2, clause 2 of the Constitution of the United States (relating to the advice and consent of the Senate to the making of treaties); and

(II) the prospective NATO member can fulfill the obligations and responsibilities of membership, and the inclusion of such state in NATO would serve the overall political and strategic interests of NATO and the United States.

(B) Requirement for Consensus and ratification. The Senate declares that no action or agreement other than a consensus decision by the full membership of NATO, approved by the national procedures of each NATO member, including, in the case of the United States, the requirements of Article II, section 2, clause 2 of the Constitution of the United States (relating to the advice and consent of the Senate to the making of treaties), will constitute a commitment to collective defense and consultations pursuant to Articles 4 and 5 of the North Atlantic Treaty.

(6) Partnership for peace. The Senate declares that

(A)(i) the Partnership for Peace between NATO members and the Partnership for Peace countries is an important and enduring complement to NATO in maintaining and enhancing regional security; and

(ii) the Partnership for Peace has greatly enhanced security and ability throughout the Euro-Atlantic area, with Partnership for Peace countries, especially countries that seek NATO membership, and has encouraged them to strengthen political dialogue with NATO allies and to undertake all efforts to work with NATO allies, as appropriate, in the planning, conduct, and oversight of those activities and projects in which they participate and to which they contribute, including combating terrorism;

(B) the Partnership for Peace serves a critical role in promoting common objectives of NATO members and the Partnership for Peace countries, including

(i) increasing the transparency of national defense planning and budgeting processes;

(ii) ensuring democratic control of defense forces;

(iii) maintaining the capability and readiness of Partnership for Peace countries to contribute to operations of the United Nations and the Organization for Security and Cooperation in Europe;

(iv) developing cooperative military relations with NATO;

(v) enhancing the interoperability between forces of the Partnership for Peace countries and forces of NATO members; and

(vi) facilitating cooperation of NATO members with countries from Central Asia, the Caucasus, and eastern and southeastern Europe.

(7) The NATO-Russia Council. The Senate declares that

(A) it is in the interest of the United States for NATO to continue to develop a new and constructive relationship with the Russian Federation as the Russian Federation pursues democratization, market reforms, and peaceful relations with its neighbors; and

(B) the NATO-Russia Council, established by the Heads of State and Government of NATO and the Russian Federation on May 28, 2002, will

(i) provide an important forum for strengthening peace and security in the Euro-Atlantic area, and where appropriate for consensus building, consultations, joint decisions, and joint actions;

(ii) permit the members of NATO and Russia to work as equal partners in areas of common interest;

(iii) participate in joint decisions and joint actions only after NATO members have consulted, in advance, among themselves about what degree any issue should be subject to the NATO-Russia Council;

(iv) not provide the Russian Federation with a voice or veto in NATO's decisions or freedom of action through the North Atlantic Council, the Defense Planning Committee, or the Nuclear Planning Committee; and

(v) not provide the Russian Federation with a veto over NATO policy.

(8) Compensation for victims of the Holocaust and of Communism. The Senate finds that

(A) individuals and communal entities whose property was seized during the Holocaust or the communist period should receive appropriate compensations;

(B) Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have put in place publicly declared mechanisms for compensation for property confiscated during the Holocaust and the communist era, including the passage of statutes, and for the opening of archives and public reckoning with the past;

(C) Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have each adjudicated and resolved numerous specific claims for compensation for property confiscated during the Holocaust or the communist era over the past several years;

(D) Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have each established active historical commissions or other bodies to study and report on their government's and society's role in the Holocaust or the communist era; and

(E) the governments of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have made clear their openness to active dialogue with other governments, including the United States Government, and with nongovernmental organizations, on coming to grips with the past.

(9) Treaty interpretation. The Senate reaffirms condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990 (adopted at Vienna on May 31, 1996), approved by the Senate on May 14, 1997, relating to condition (1) of the resolution of ratification of the Intermediate-Range Nuclear Forces (INF) Treaty approved by the Senate on May 27, 1988.

(10) Consideration of certain issues with respect to NATO decisionmaking and membership.

(A) Sense of the Senate. It is the sense of the Senate that, not later than the date that is eighteen months after the date of the adoption of this resolution, the President should place on the agenda for discussion at the North Atlantic Council

(i) the NATO ''consensus rule''; and

(ii) the merits of establishing a process for suspending the membership in NATO of a member country that no longer complies with the NATO principles of democracy, individual liberty, and the rule of law set forth in the preamble to the North Atlantic Treaty.

(B) Report. Not later than 60 days after the discussion at the North Atlantic Council of each of the issues described in clauses (i) and (ii) of subparagraph (A), the President shall submit to the appropriate congressional committees a report that describes

(i) the steps the United States has taken to place these issues on the agenda for discussion at the North Atlantic Council;

(ii) the views of the United States on these issues as communicated to the North Atlantic Council by the representatives of the United States to the Council;

(iii) the discussions of these issues at the North Atlantic Council, including any decision that has been reached with respect to the issues:

(iv) methods to provide more flexibility to the Supreme Allied Commander Europe to plan potential contingency operations before the formal approval of such planning by the North Atlantic Council; and

(v) methods to streamline the process by which NATO makes decisions with respect to conducting military campaigns.

SEC. 3. CONDITIONS

The advice and consent of the Senate to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia is subject to the following conditions, which shall be binding upon the President:

(1) Costs, benefits, burden-sharing, and military implications of the enlargement of NATO

(A) Presidential certification. Prior to the deposit of the United States instrument of ratification, the President shall certify to the Senate that

(i) the inclusion of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia in NATO will not have the effect of increasing the overall percentage share of the United States in the common budgets of NATO; and

(ii) the inclusion of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia in NATO does not detract from the ability of the United States to meet or to fund its military requirements outside the North Atlantic area.

(B) Annual reports. Not later than April 1 of each year during the 3-year period following the date of entry into force of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, the President shall submit to the appropriate congressional committees a report, which may be submitted in an unclassified and classified form, and which shall contain the following information:

(i) The amount contributed to the common budgets of NATO by each NATO member during the preceding calendar year.

(ii) The proportional share assigned to, and paid by, each NATO member under NATO's cost-sharing arrangements.

(iii) The national defense budget of each NATO member, the steps taken by each NATO member to meet NATO force goals, and the adequacy of the national defense budget of each NATO member in meeting common defense and security obligations.

(C) Reports on future enlargement of NATO.

(i) Reports Prior to Commencement of Accession Talks. Prior to any decision by the North Atlantic Council to invite any country (other than Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia) to begin accession talks with NATO, the President shall submit to the appropriate congressional committees a detailed report regarding each country being actively considered for NATO membership, including

(I) an evaluation of how that country will further the principles of the North Atlantic Treaty and contribute to the security of the North Atlantic area;

(II) an evaluation of the eligibility of that country for membership based on the principles and criteria identified by NATO and the United States, including the military readiness of that country;

(III) an explanation of how an invitation to that country would affect the national security interests of the United States;

(IV) a United States Government analysis of the common-funded military requirements and costs associated with integrating that country into NATO, and an analysis of the shares of those costs to be borne by NATO members, including the United States; and

(V) a preliminary analysis of the implications for the United States defense budget and other United States budgets of integrating that country into NATO.

(ii) Updated Reports Prior to Signing Protocols of Accession. Prior to the signing of any protocol to the North Atlantic Treaty on the accession of any country, the President shall submit to the appropriate congressional committees a report, in classified and unclassified forms

(I) updating the information contained in the report required under clause (i) with respect to that country; and

(II) including an analysis of that country's ability to meet the full range of the financial burdens of NATO membership, and the likely impact upon the military effectiveness of NATO of the country invited for accession talks, if the country were to be admitted to NATO.

(D) Review and reports by the General Accounting Office. The Comptroller General of the United States shall conduct a review and assessment of the evaluations and analyses contained in all reports submitted under subparagraph (C) and, not later than 90 days after the date of submission of any report under subparagraph (C)(ii), shall submit a report to the appropriate congressional committees setting forth the assessment resulting from that review.

(2) Reports on intelligence matters.

(A) Progress report. Not later than January 1, 2004, the President shall submit a report to the congressional intelligence committees on the progress of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia in satisfying the security sector and security vetting requirements for membership in NATO.

(B) Reports regarding protection of intelligence sources and methods. Not later than January 1, 2004, and again not later than the date that is 90 days after the date of accession to the North Atlantic Treaty by Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, the Director of Central Intelligence shall submit a detailed report to the congressional intelligence committees

(i) identifying the latest procedures and requirements established by Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia for the protection of intelligence sources and methods; and

(ii) including an assessment of how the overall procedures and requirements of such countries for the protection of intelligence sources and methods compare with the procedures and requirements of other NATO members for the protection of intelligence sources and methods.

(C) Definitions. In this paragraph:

(i) Congressional Intelligence Committees. The term ''congressional intelligence committees'' means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(ii) Date of Accession to the North Atlantic Treaty by Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia. The term ''date of accession to the North Atlantic Treaty by Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia'' means the latest of the following dates:

(I) The date on which Bulgaria accedes to the North Atlantic Treaty.

(II) The date on which Estonia accedes to the North Atlantic Treaty.

(III) The date on which Latvia accedes to the North Atlantic Treaty.

(IV) The date on which Lithuania accedes to the North Atlantic Treaty.

(V) The date on which Romania accedes to the North Atlantic Treaty.

(VI) The date on which Slovakia accedes to the North Atlantic Treaty.

(VII) The date on which Slovenia accedes to the North Atlantic Treaty.

(3) Requirement of full cooperation with United States efforts to obtain the fullest possible accounting of captured and missing United States personnel from past military conflicts or cold war incidents. Prior to the deposit of the United States instrument of ratification, the President shall certify to Congress that each of the governments of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia are fully cooperating with United States efforts to obtain the fullest possible accounting of captured or

missing United States personnel from past military conflicts or Cold War incidents, to include

(A) facilitating full access to relevant archival material; and

(B) identifying individuals who may possess knowledge relative to captured or missing United States personnel, and encouraging such individuals to speak with United States Government officials.

SEC. 4. DEFINITIONS.

In this resolution:

(1) Appropriate congressional committees. The term ''appropriate congressional committees'' means the Committee on Foreign Relations, the Committee on Armed Services, and the Committee on Appropriations of the Senate and the Committee on International Relations, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives.

(2) NATO. The term ''NATO'' means the North Atlantic Treaty Organization.

(3) NATO members. The term ''NATO members'' means all countries that are parties to the North Atlantic Treaty.

(4) North Atlantic area. The term ''North Atlantic area'' means the area covered by Article 6 of the North Atlantic Treaty, as applied by the North Atlantic Council.

(5) North Atlantic Treaty. The term ''North Atlantic Treaty'' means the North Atlantic Treaty, signed at Washington on April 4, 1949 (63 Stat. 2241; TIAS 1964), as amended.

(6) Protocols to the North Atlantic Treaty of 1949 on the accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia. The term ''Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia'' refers to the following protocols transmitted by the President to the Senate on April 10, 2003 (Treaty Document No. 108–4):

(A) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Bulgaria, signed at Brussels on March 26, 2003.

(B) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Estonia, signed at Brussels on March 26, 2003.

(C) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Latvia, signed at Brussels on March 26, 2003.

(D) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Lithuania, signed at Brussels on March 26, 2003.

(E) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Romania, signed at Brussels on March 26, 2003.

(F) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Slovakia, signed at Brussels on March 26, 2003.

(G) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Slovenia, signed at Brussels on March 26, 2003.

(7) United States instrument of ratification. The term ''United States instrument of ratification'' means the instrument of ratification of the United States of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia.

(8) Washington Treaty. The term ''Washington Treaty'' means the North Atlantic Treaty, signed at Washington on April 4, 1949 (63 Stat. 2241; TIAS 1964), as amended.

The Senator from Indiana, the chairman of the Foreign Relations Committee.

Mr. LUGAR. Mr. President, today the Senate has taken another step in making Europe whole and free. In June 2001, President Bush delivered a speech in Warsaw, Poland confirming that:

All of Europe's new democracies, from the Baltic to the Black Sea and all that lie between, should have the same chance for security and freedom—and the same chance to join the institutions of Europe.

Today the Senate ratified that vision and has voted overwhelmingly to enlarge the NATO alliance to include seven new members.

I would like to thank a number of people for their contributions to this important debate. Jessica Fugate, Kate Burns, and Mike Haltzel worked tirelessly to produce a resolution of ratification and committee report that enjoyed the unanimous support of the Foreign Relations Committee and has been ratified by the Senate. Bob Bradtke, of the Department of State; Kurt Volker, of the National Security Council, and Ian Brzezinski, of the Department of Defense; worked closely with committee staff to ensure strong administration support for the work we have completed today. Lastly, special thanks to Paul Gallis, of the Congressional Research Service, for his valuable contributions to the Committee's work and the Senate's review of the Protocols of Accession.

I especially thank the distinguished ranking member from Delaware, Senator BIDEN, for his cooperation and leadership on this important issue. This is the second major treaty the Foreign Relations Committee has guided to ratification in a few short months. I look forward to continuing our bipartisan partnership in the days and weeks ahead as we turn to the State Department authorization bill, the HIV/AIDS bill, and the Foreign Relations Authorization Act.

Mr. President, I know unanimous consent has been granted for the Senate to stand in recess. I look forward to welcoming the foreign ministers of the countries we greet today.

VISIT TO THE SENATE OF THE FOREIGN MINISTERS OF BULGARIA, ESTONIA, LATVIA, LITHUANIA, ROMANIA, SLOVAKIA, AND SLOVENIA

The PRESIDENT pro tempore. Under the previous order, the Senate stands in recess subject to the call of the Chair to greet the seven Foreign Ministers of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia.

RECESS SUBJECT TO THE CALL OF THE CHAIR

There being no objection, the Senate, at 10:08 a.m., recessed subject to the call of the Chair and reassembled at 10:22 a.m. when called to order by the Presiding Officer (Mr. COLEMAN).

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

MEASURES PLACED ON THE CALENDAR—S. 1009 AND S. 1019

The PRESIDING OFFICER (Mr. BURNS). The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I understand there are two bills at the desk due for a second reading.

The PRESIDING OFFICER. The Senator is correct.

Mr. COLEMAN. I ask that it be in order to read the titles of the measures en bloc.

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

The assistant legislative clerk read as follows:

A bill (S. 1009) to amend the Foreign Assistance Act of 1961 and the State Department Basic Authorities Act of 1956 to increase assistance for foreign countries seriously affected by HIV/AIDS, tuberculosis, and malaria, and for other purposes.

A bill (S. 1019) to amend titles 10 and 18, United States Code, to protect unborn victims of violence.

Mr. COLEMAN. I object to further proceedings en bloc.

The PRESIDING OFFICER. The bills will be placed on the Calendar.

ORDER OF PROCEDURE

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Senate now resume consideration of the energy bill until 11:30 today. I further ask consent that at 11:30 the Senate proceed to the consideration of S. 113, the FISA bill; provided further, that the previously scheduled cloture votes occur at 1:45 today as under the previous order.

Finally, I ask consent that at 12:45 today, Senator DEWINE be recognized to speak for up to 15 minutes in morning business.

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

Without objection, it is so ordered.

ENERGY POLICY ACT OF 2003

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 14) to enhance the energy security of the United States, and for other purposes.

Mr. DOMENICI. Mr. President, I will proceed to discuss a proposed ethanol amendment that will be offered to this pending bill later in the proceedings when it is in order. When I am finished within a few moments, I will yield to the minority leader who will speak, and thereafter we will rotate back and forth for as long a time as we have this morning to discuss this measure.

Today the Senate will consider what will soon be offered as an amendment to S. 14, which I hope will become the renewable fuel standards portion of the comprehensive energy bill. The amendment offered today by the majority leader and the minority leader, and Senators INHOFE, DORGAN, LUGAR, JOHNSON, GRASSLEY, HARKIN, HAGEL,

DURBIN, VOINOVICH, NELSON of Nebraska, TALENT, DAYTON, COLEMAN, EDWARDS, CRAPO, and DEWINE—and if there are any others who desire to join in the amendment, it is obviously open for submitting their names as additional cosponsors.

This represents the culmination of a long and difficult debate about the U.S. transportation fuels policy. The amendment is the product of more than 4 years of work by the stakeholders and Members of this body and represents a solid compromise between disparate groups.

The amendment establishes a renewable fuels standard providing that a portion of the U.S. fuel supply will be provided by renewable domestic fuels, primarily ethanol, growing to 5 billion gallons a year by the year 2012. In addition to full support from the affected parties, the amendment also enjoys the administration's full support.

The Frist-Daschle amendment will promote increased domestic energy development, reduce oil imports, protect the environment, bolster our economy, and stimulate rural economic development by increasing production and use of domestic renewable fuels. I know there are a number of Senators who strongly opposed a similar amendment when it was offered and adopted last year. I expect them to offer a number of second-degree amendments this year again. This is their right, but I do expect—as the Senate did last year—the Senate to adopt the language of the Frist-Daschle amendment.

In view of the significant amount of work that has been put into this amendment and the consensus it represents among the affected parties, I urge my colleagues to adopt the amendment as offered, without amendments.

I yield the floor at this point.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I first want to commend the chairman of the Energy Committee for his strong statement in support and for his leadership on this and on so many of the issues pertaining to energy. I look forward to continuing to work with him as we proceed in consideration of this legislation.

I am also delighted to join with the distinguished majority leader in introducing the first amendment to the Energy Policy Act of 2003.

The fact that this is the first amendment reflects the importance of the subject that we will be discussing. It is my hope that the majority leader's endorsement will help assure enactment of this proposal at the earliest possible date.

It was 1990 when a number of us joined together, Republicans and Democrats, including then-Senate minority leader, Bob Dole, and TOM HARKIN, and we introduced the reformulated gasoline, or RFG, legislation as a provision of the 1990 Clean Air Act amendments.

The RFG provision, with its minimum oxygen standard, was adopted in the Senate by an overwhelming vote of 69–30. Eventually, it was signed into law by President George H.W. Bush.

I am proud to say that this program resulted in substantial improvement of air quality all over the country. It stimulated increased production of renewable ethanol and other oxygenates needed to meet the minimum oxygen standard.

In fact, between the onset of RFG in January of 1995 and January of 2003, production of ethanol has increased from 1 billion gallons per year to nearly 2.5 billion gallons.

This increased farm economy by hundreds of millions of dollars annually and reduced our dependence upon foreign oil by more than 100,000 barrels per day. Unfortunately, the detection of MTBE in ground water in the late 1990s required us to find a way to get MTBE out of gasoline without sacrificing the air quality and public health benefits of the RFG program.

The answer that my good friend, DICK LUGAR, and I conceived several years ago was the renewable fuels standard, which would eliminate the minimum oxygen requirement that some of our colleagues find problematic for urban centers and replace it with a nationwide renewable fuels standard.

This standard increases ethanol production and protects consumers by creating a credit trading system that provides an economic incentive to use the type of fuel that is most cost effective in the various regions of the country.

On May 4, 2000, I was proud to introduce, along with Senator LUGAR, the first iteration of the amendment that is before us today.

That proposal—similar to the one we are considering today—reconciled historically competitive interests in a manner that promoted a broad range of national policies.

It would protect ground water, enhance our national energy security, reduce greenhouse gas emissions, and promote investment and job creation in rural communities by tripling production of ethanol over the course of the next 10 years.

The essence of that proposal was incorporated into legislation reported by the Senate Environment and Public Works Committee in September 2000. Unfortunately, time ran out in the 106th Congress before final action could be taken on that Committee bill.

In the 107th Congress, Senator LUGAR and I again joined to introduce the Renewable Fuels Act. This legislation was incorporated into last year's Senate-passed energy bill as part of the fuels agreement with the support of 69 Senators. Unfortunately, time again ran out before the energy bill could be enacted into law.

This February, Senator LUGAR and I, Senator HAGEL, one of the real movers on this legislation early on, along with a growing number of our colleagues, reintroduced this latest iteration of the renewable fuels standard that we have now incorporated in this amendment. I am pleased that the Senate Environment and Public Works Committee has once again embraced it and reported it out of committee. That proposal, S. 791, is currently on the Senate calendar.

This chronology underscores the point that the time to pass this important legislation is now. The groundwork has been laid, and the case for the bill is established. The benefits of the renewable fuels standard for agriculture, the rural economy, energy and the environment are dramatic.

The legislation benefits agriculture. Next year, one in every three rows of corn grown in South Dakota will go into ethanol production. There are currently nine ethanol plants operating in South Dakota with two more under construction. Local corn prices have increased 10 cents per bushel near these plants, and USDA estimates that corn prices will increase 50 cents per bushel under the RFS. As a result, USDA has estimated that the RFS will raise farm income by $1.3 billion annually. Taxpayer outlays would drop dramatically because of resulting farm program savings.

This legislation benefits the rural economy. Over 5,000 South Dakotans have invested in these plants, and over 500 people are directly employed by the ethanol industry in the state. USDA estimates that for every 100-million-gallon ethanol plant built, 2,250 local jobs can be created throughout a community.

This legislation also enhances our energy security. Look at America's energy situation today: gasoline prices are high and America is importing close to 60 percent of the oil we use. At the same time, our substantial appetite for energy continues to grow. Over the next 10 years, the United States is expected to consume roughly 1.5 trillion gallons of gasoline. At the same time, we hold only 3 percent of the known world oil reserves.

The Renewable Fuels Standard will save the U.S. $4 billion in imported oil each year because we triple the use of renewable fuels over the next 10 years.

As for the environment, this legislation ensures that the clean air benefits that we have achieved because of the oxygenate standard are maintained through strong anti-backsliding language and addresses the serious problems of MTBE contamination.

Specifically, the amendment bans MTBE in 4 years, authorizes funding to clean up MTBE contamination and fix leaking underground tanks, allows the most polluted states to opt into the reformulated gasoline program, and provides all States with additional authority under the Clean Air Act to address air quality concerns.

The amendment also eliminates the oxygen requirement from the RFG program, a change that is very important to the efforts of States such as California and New York that are planning

to eliminate MTBE from their gasoline supplies in the near future.

To preserve the hard-fought air-quality gains that have resulted from the implementation of that requirement, the bill creates a renewable fuels standard that will nearly triple the use of renewable fuels like ethanol and biodiesel over the next 10 years.

Finally, the bill provides special encouragement to biomass-based ethanol, which holds great promise for converting a variety of organic materials into useful fuel, while substantially reducing greenhouse gas emissions.

This will have substantial benefits for the environment and for rural economies, while helping to lower our dangerous dependence on foreign oil.

Some of my colleagues from large coastal states have expressed concern that this amendment treats their constituents unfairly and seek a carve-out from its requirements. I respectfully suggest that their concerns are not supported by the facts.

Governors Gray Davis and George Pataki, one a Democrat and one a Republican, leaders of the two most populous States in the country, have stated publicly that their States are better off under the Renewable Fuels Act than they are under current law.

Their first priority by far is to get out from under the minimum oxygen standard that will force them to use ethanol when MTBE is eliminated from the gasoline supply. The amendment before us allows them that flexibility which they so desperately seek. Moreover, my colleagues from California and New York worry that even though their States will no longer be required to purchase ethanol as a result of the oxygen standard, the cost of gasoline will rise precipitously as a result of the RFS.

That is simply not the case. Last April the Energy Information Agency issued a report stating that the cost of establishing a renewable fuels standard is less than 1 cent per gallon for reformulated gasoline and less than 0.5 cent per gallon for all gasoline.

Just last month, the California Energy Commission issued a report stating that the recent increase in California's gasoline prices cannot be attributable to availability or cost of ethanol which is consistent with the EIA projections.

What is even more compelling is that California is using nearly twice the amount of ethanol this year than they would be required to under the RFS.

I understand that my colleagues are fighting for what they believe is in the best interests of their constituents, and I respect that. But my goal in promoting the renewable fuels standard is to solve a nationwide problem with a nationwide solution. My constituents would prefer not to give up the oxygen standard, which has played such an important role historically in expanding the production of ethanol. But I understand that states like California need greater flexibility in their gasoline supply. That is why I am willing to look for new prescriptions that allow States to use alternatives to ethanol and continue to promote the development of the domestic ethanol industry, which I believe is in the national interest.

The renewable fuels amendment meets that test. This legislation is a careful balance of often disparate and competing interests—and a compromise in the finest tradition of the U.S. Senate. Meeting our energy challenges is a difficult problem, but is also a great opportunity to demonstrate American strength and ingenuity.

This amendment takes advantage of both, and I look forward to its passage.

I thank the Chair for his support and effort, and I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I failed to indicate at the outset what has been mentioned by the distinguished minority leader at the outset. This is a jobs-producing measure. The entire energy bill, as we consider it, is a measure that will produce literally thousands of jobs for the American people. Right at the outset, the very first amendment is a clear indication of how in this bill we intend to produce, in this instance, agricultural jobs but not pure agriculture—industrial, as it relates to agriculture with the construction of ethanol plants in and out and around and about agricultural America.

Having said that, I know there are a number of Senators who want to speak. It was not for me to say that we have no consent agreement as to how we will proceed, but I saw the distinguished Senator, Senator TALENT, standing first. I might suggest, just for some orderliness, he proceed next, and the distinguished Senator from Nebraska follow that. Then, if other Senators are here, and they seek recognition—

Mr. BOND. Mr. President, may I ask my good friend if he would mention my name in that list?

Mr. DOMENICI. I wonder, considering the condition of the distinguished Senator, if he might proceed first.

Mr. TALENT. I was going to suggest that to the Senator from New Mexico and the Chair.

Mr. DOMENICI. Might we amend that, then, and have Senator BOND go first, Senator TALENT, and then the Senator from Nebraska? Is that all right? We will proceed in that manner.

I yield the floor.

Mr. BOND. Mr. President, I thank my friend from New Mexico and I appreciate his kindness, and also my colleagues from Missouri and Nebraska.

I rise today in support of the renewable fuels standard, as passed by the Senate Environment and Public Works Committee on which I have the privilege of sitting.

This package provides a means for significant reductions in our dependence on foreign oil while we pursue cheaper energy for consumers that is produced in rural America by our hard-working farmers and ranchers.

I have spent a lot of years in the Senate Chamber talking about these issues. Recently a friend complained to me that he was tired of me talking about biodiesel. We first started talking about it a long time ago. But I am pleased to have the burr under the saddle to point out that biodiesel and ethanol are vitally important elements for our energy program.

I am pleased to see so many of our colleagues joining in the fight today. My good friend Senator JIM TALENT from Missouri has been a leader on the Energy Committee. I know my colleague Senator HAGEL from Nebraska has long been a champion of ethanol. I add my thanks and my appreciation to the distinguished chairman of the Environment and Public Works Committee, Senator INHOFE of Oklahoma, for taking the leadership position on this issue.

Increasing the use of renewable fuels such as ethanol and biodiesel diversifies our energy infrastructure, making it less vulnerable to acts of terrorism while increasing the number of available fuel options, enhancing competition, and potentially reducing consumer costs of fuel.

Speaking of decreased fuel costs, I am reminded of some of the comments of my colleagues during consideration of this package in the Environment and Public Works Committee. At that time, it was suggested that ethanol as an oxygenate was the cause of high fuel prices in California and other areas. I bet we will hear that argument again.

Just as a marker, note this fact. I refer my colleagues to the recent California Energy Commission report promulgated by Gov. Gray Davis. In discussing the report's findings, California Energy Commission chairman William Keese indicated that ''Ethanol, the ingredient, did not have an impact that we can see on prices. . . .''

Frankly, that ought to answer the questions and concerns that undoubtedly will be raised on the floor. In fact, I would argue that ethanol and biodiesel actually reduced the consumer cost of fuel by extending supplies, offering alternatives to more costly imported oil, and providing leverage for independent fuel marketers to compete against the larger, more powerful integrated oil companies.

The renewable standard will more than double the amount of renewable fuel we use. I am told that renewable fuel use will increase to about 3 percent of our total transportation fuel supply, replacing roughly 66 billion gallons; that is, 1.6 billion barrels of foreign crude oil by 2012.

Of course, the environmental benefits of transitioning from petroleum fuels to clean, domestically produced renewable ethanol and biodiesel is clear. Not only can we reduce our dependence on foreign oil but with the renewable standard our environmental goals of

reducing hydrocarbon, particulate sulfur, and other polluting emissions would be pursued.

This RFS will also have a positive impact on the economy, particularly in rural areas which have been hardest hit in the economic slowdown.

According to studies, the renewable standard would create as many as 300,000 American jobs, increase net farm income by $6.6 billion a year, and reduce farm program payments by $7.8 billion. In other words, we can reduce farm program payments and increase net farm income by a combined total of $14.4 billion. Not many programs give you that much bang for the buck.

One farm analyst said that as many as 13.1 million acres of corn can be used to supply ethanol by 2012. That is almost 19 percent of last year's corn production. Today, only 6 percent of the crop goes into ethanol.

In our home State, Missouri corn farmers could see an average increase of about 12 cents per bushel over the next 10 years. Similarly, our soybean farmers will see increased benefits as biodiesel use will increase dramatically.

I encourage and invite my colleagues to come out to the heartland to see what we have. Come out and visit Nebraska, Missouri, and Iowa and see what this industry is all about. We could all learn the benefits of ethanol, soy diesel, and biodiesel. We will see how the homegrown renewable fuel benefits the environment, the economy, and our communities. Come out to my State and see what farm leaders have done to provide value-added opportunities for Missouri farmers.

In 1994, Golden Triangle Energy of Craig, MO, and Northeast Missouri Grain Processors of Macon, MO, organized as new generation cooperatives. Northeast Missouri Grain Processors opened their plant on April 29, 2000. I was pleased to be there. It had been producing 22 million gallons of ethanol per year. They have just flipped the switch on an additional capacity to make over 40 million gallons a year.

Come to Missouri and visit the communities and areas where ethanol production is underway and see the impact of the expanding usage of fuel through this renewable standard on Main Street, U.S.A.

I now defer to my colleagues. I thank them for their kind accommodation. I express my thanks also to the distinguished manager of this bill, who is doing an outstanding job. We look forward to seeing a good energy bill passed. But a good energy bill must have a good renewable fuel standard.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. Mr. President, I thank my colleague from Missouri for his kind comments.

It is a great pleasure to be here today to talk on behalf of such an important amendment and to recognize that we certainly have come a long way.

For many years, our Nation has needed a sound and balanced energy policy that includes a renewable fuels standard. For many years, we have all talked and talked about alternative energy, about renewable energy, and today with the first bipartisan leadership amendment of this Congress, the Republican and Democratic leaders have introduced the renewable fuels standard legislation as an amendment to S. 14.

I believe what has happened today stands on the shoulders of the work by many of the most distinguished Members of this body in the last decade. We heard from the senior Senator from Missouri. We are going to hear from the Senator from Nebraska and the compromise, if you will, in the last Congress.

The renewable fuels standard is the biggest single reason I sought to get on the Energy Committee. I am proud to be one of the cosponsors of the amendment and to be associated with what is going to happen today. I know there are going to be many chances to come to the floor and fend off various second-degree amendments from opponents of renewable fuels. So I will keep my initial comments brief today. I look forward to future opportunities to discuss other aspects of the amendment.

I note also at the outset that this legislation is supported by a historic coalition. When you get a coalition that ranges from the Farm Bureau to the American Petroleum Institute, it tells you the consensus that has been created finally on behalf of this idea. It is because it is a good idea. It is because it is the right thing to do. It is at the crux of so much we all want for Americans. It is at the crux of economic growth in jobs. It is at the crux of energy security. It is at the crux of environmental quality and value-added agriculture and family farming.

An article ran on April 23 in the Daily Statesman, which is the daily paper in Dexer, MO. The headline was ''Missouri Job Loss Rate Number One in the Nation.'' Last year, Missouri lost 77,000 jobs. The enactment of the renewable fuels standard will, first and foremost—and right away—bring thousands of jobs to Missouri, and tens and tens of thousands of jobs—hundreds of thousands of jobs—to the country.

We are talking about long-term good jobs in agriculture, in trade, in transportation, in energy, and in food processing. We are talking about jobs on the farm. We are talking about construction jobs to build these plants and maintain them. We are talking about jobs for the suppliers of these ethanol plants. We are talking about jobs for those who buy the ethanol and the byproducts. We are talking about transportation jobs in shipping the ethanol. We are talking about trade opportunities for the United States. It will happen as a result of what I believe the Senate is going to do today.

A recent study found that increasing ethanol production to 5 billion gallons annually would create 214,000 jobs in the country, $5.3 billion in new investment, and increase household income by $51 billion. I want those benefits for this country, and I want those benefits for Missouri.

These increasingly modern ethanol plants are equipped to produce 40 million gallons of ethanol a year. I have visited the plants, as has my colleague, Senator BOND, in Missouri, plants we already have in Craig and Macon. The economic benefits of one of those plants are significant. They include an increase of household income for the community, the county in which these plants are operated; many of these counties have been struggling economically. It includes an increased household income of $20 million for these counties annually. Additional farmer cooperatives around the State of Missouri are organizing funding in an effort to produce even more ethanol in Missouri. I know this is happening in Nebraska. It is happening all over the Midwest. It is going to continue happening.

Ethanol is also at the crux of energy security for America. Ethanol, biodiesel, and other renewable fuels are going to be playing an increasing role in reducing the need for imported oil. This is an area where I have to respectfully disagree with the opponents of the renewable fuels standard.

I am very strongly in support of providing incentives for increased exploration and recovery of oil reserves in this country. And we have a progrowth, proenergy energy bill, largely because of the efforts of the distinguished chairman of the Energy Committee. I have supported every effort to increase the amount of oil reserves we have in the United States and that we can practically explore and recover.

But it is clear that we cannot just drill our way out of our dangerous oil dependency. We have to have other alternatives, and ethanol and biodiesel are the alternatives we have now—not 5 years, not 10 years, not 15 years from now, but now—to reduce our dependence on oil imports. I do not ever want to be in a situation again where we are sending $4 billion a year to somebody like Saddam Hussein to buy oil, and depending on regimes like that one for the health of our national economy.

Ethanol is a key to energy independence for the United States. The United States is increasingly dependent on imported energy to meet our personal, transportation, and industrial needs. As a domestic, renewable source of energy, ethanol can reduce our dependence on foreign oil and increase the United States' ability to control its own security and economic future. Our energy policy should first and foremost promote domestic, renewable fuels, not foreign oil imports.

This is an area where I respectfully disagree with the opponents of renewable fuels standard. It is clear that we cannot drill our way out of our dangerous oil dependency—especially

without access to the oil in Alaska's ANWR. America's national, energy, and economic security are vulnerable due to our dangerous dependence on oil imports.

In 1999, America was importing over 55 percent of its oil and petroleum products. Just 2 years later, our dependency increased to over 59 percent. By 2025, the Energy Information Administration projects the U.S. will import nearly 70 percent of its petroleum. Something must be done.

It is absolutely necessary that we take steps to reduce our dependence on foreign oil. Over the next decade the RFS will reduce crude oil imports by an estimated 1.6 billion barrels.

In addition to the establishment of a national ethanol standard, the amendment has other important provisions that include an orderly phase-down of MTBE use and removal of the oxygen content requirement for reformulated gasoline. That is very important, and it is very important to the environment.

I am sure that over the coming weeks we are going to have a lot of opportunities to debate things such as climate change and CAFE standards. I remind opponents of this amendment that ethanol is one of the best tools we have to fight air pollution from vehicles. I encourage all proenvironment organizations to score this amendment as a vote in favor of America's air quality.

The use of ethanol-blended fuels reduces greenhouse gas emissions by 12 to 19 percent compared with conventional gasoline. The American Lung Association of Chicago credits ethanol-blended reformulated gasoline with reducing smog-forming emissions by 25 percent since 1990. Again, this is an alternative which we have today to protect the environment.

The chairman's energy bill contains many exciting opportunities for the development of clean hydrogen vehicles. I support that. But those technologies are a long way off.

My children may drive hydrogen cars. Today I can drive a car fueled by ethanol. A couple weeks ago, I visited a Break Time convenience store in Columbia, MO, that is selling ethanol at the same price that it is selling regular gasoline.

Renewable fuels such as ethanol and biodiesel provide a solution to our air quality problems that we can use now. Today you could fill your car with an ethanol blend or a biodiesel blend—without any changes to your vehicle. The chairman's energy bill contains many exciting opportunities for the development of a clean, hydrogen vehicle, but we all know these technologies are a long way off. My children may be driving these hydrogen cars, but today I can drive a car fueled by ethanol. Fleet vehicles in Missouri can run on ethanol or biodiesel without any costly engine upgrades—today.

The use of these renewable fuels will bring environmental benefits in the short term while we continue to explore long-term opportunities such as hydrogen cars and other technologies.

As I said, I recently toured both of the ethanol plants in Missouri and visited an ethanol fueling station during the April recess. I have to tell you, this is an exciting and innovative way to add value to traditional commodities. The use of grain for ethanol production adds up to 30 cents to every bushel of corn. Not only do farmers benefit from the higher price but also by joining cooperative and building ethanol production facilities. They are able to directly take advantage of the value-added market through ownership of the plant. They continue to make money during times of price volatility.

There is no question that the renewable fuels standard will reduce our dependence on foreign oil. It will slow the deterioration of the environment through the reduction of fossil fuel emissions, enhance national, energy and economic security, create a new industrial base with tens of thousands of new, high quality jobs, and add value to traditional commodities.

I am happy to join Senate Leadership in offering this amendment. It is time that we make the RFS a part of our national energy policy.

Mr. President, I want to say how pleased and proud I am to be a part, in a small way, of this effort. I am especially pleased that this is the first bipartisan amendment that is being offered on the Senate floor. It will strengthen this energy bill we put together under the leadership of Senator DOMENICI. It is something we can all stand up and support.

I hope we will get a thumping, bipartisan majority in support of this amendment. Again, it is a key to jobs. It is a key to energy independence. It is a key to environmental quality. And it is a key to value-added agriculture and the family producers in Missouri and around the country. I am pleased to speak in favor of it.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, we are going to hear now from one of the early proponents of ethanol and of this bill and of this composite that ultimately got such broad bipartisan support. It is my privilege to have as a supporter of this amendment and of the energy bill the distinguished Senator from Nebraska, Mr. HAGEL.

I thank the Senator for all the work he has done in this area and for all the help he has given me by way of advice on the energy bill, which is pending before the Senate, of which this will become an integral and vital part. Thank you so much.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HAGEL. Mr. President, I first want to recognize the comments of the distinguished chairman of the Energy Committee. He is far too generous, but that is usually his nature. And I appreciate very much his thoughtful words.

I appreciate the comments of my friend from Missouri. I think they cut to the essence of what this issue is about, as well as the comments of our dear friend, the senior Senator from Missouri.

(Mr. DOMENICI assumed the chair.)

Mr. HAGEL. Mr. President, I am privileged to be part of this effort because I do not believe there is anything more important for the future of this country than to establish an energy policy that we can build upon; that does, in fact, move right to the core of our national security, our economic growth, and all of the elements that are interconnected for the future of this country.

So I come to the floor this morning to address briefly some of the elements of this amendment that will be offered and to, once again, register my strong support of the renewable fuels standard amendment to the energy bill.

I, like my colleagues who have spoken prior to me, wish to recognize and thank the leadership of Majority Leader FRIST and Minority Leader DASCHLE for getting this amendment to the floor, and, of course, the distinguished chairman of the Energy Committee, Senator DOMENICI, for allowing us to have what many of us believe is a very important amendment to be the first amendment up on the energy bill, of which I am a strong proponent and supporter.

This amendment, as we have heard, would enhance air and water quality, reduce supply and distribution challenges in the gasoline market, and increase energy security by expanding the use of clean, domestically produced renewable fuels.

Specifically, this amendment follows the advice of the EPA's Blue Ribbon Panel on Oxygenates by repealing the Federal oxygenate mandate and phasing out the use of MTBE nationwide. It also contains a reasonable renewable fuels standard, which would gradually increase the Nation's use of renewable fuel to 5 billion gallons a year by 2012—all of this while protecting the environmental gains already made by the reformulated gasoline program.

This legislation mirrors the bipartisan fuels agreement in last year's Senate energy bill, of which it has been stated here this morning gained the votes of 69 Senators. This year, we have worked to build an even broader bipartisan coalition of cosponsors. Much has happened since the Senate passed its energy bill last year. The renewable fuels industry has expanded considerably to meet growing demand.

The ethanol industry opened 12 new plants last year, with 10 additional plants now under construction. Sixteen of these new plants are farmer owned—farmer owned—individually owned cooperatives.

By the end of 2003, annual ethanol production capacity is expected to exceed 3 billion gallons. In December, the ethanol industry wrapped up a record year—2.13 billion gallons in 2002, up by more than 20 percent over 2001.

Also, Chevron Texaco announced earlier this year it will switch from blending MTBE to blending ethanol in the southern California market, making Chevron the last of the large California refiners to make the switch to ethanol. This means that this year approximately 80 percent of California's federally reformulated gasoline will be blended with ethanol.

We should not forget that biodiesel, made primarily from soybeans, and still a developing fuel technology, has grown enough that it is now used in more than 200 State and Federal automobile fleets, using a 20-percent blend or higher.

Today, 16 States have already banned or are in the process of banning MTBE. With State MTBE bans will come increased challenges to fuel distribution and supply.

The national phase-down of MTBE proposed in this bill will help us meet these challenges. And a national renewable fuels standard with a credit and trading program—that makes sense, which is relevant, which has common sense—will ensure that renewable fuels are used where they make the most sense—not a mandate, where they make the most sense.

In fact, according to a recent analysis by the Department of Energy, enacting this fuels bill would even reduce refiner costs at least by .2 percent per gallon compared to current law.

The standard in this amendment is a fair and workable compromise we crafted over a year ago. My friend from Missouri, Senator TALENT, referenced the compromise, referenced the organizations that came together over a long period of time to fashion a very workable alternative, built upon the good work of many you have heard referenced this morning: Senator DASCHLE, Senator LUGAR, so many who have worked so hard for so many years, Senator DOLE. It has not just come from corn and soybean-producing States. It has come from the leadership of individual Senators with a wider lens of understanding of national security issues, environmental issues, and economic issues, because they are all interconnected.

This effort was bolted together by many people who deserve much credit: The American Petroleum Institute, National Farm Bureau, the environmental community, Northeast air directors, agriculture groups from all over the country, DOE, EPA, and many others. Senator DASCHLE and I helped facilitate those talks last year, as well as a number of our colleagues who are here today and will most likely speak today.

Contrary to the opponents of this amendment, this is not a per-gallon mandate. It will not force a specific level of compliance in places where compliance may be difficult. In fact, the credit trading provision in this amendment will give flexibility to refiners who utilize ethanol or biodiesel where it is most economically attractive.

Our Nation needs a broader, deeper, and more diverse energy portfolio. Today less than 1 percent of America's transportation fuel comes from renewable sources. Under this amendment, renewable fuel would increase to approximately 3 percent of our total transportation fuel supply, tripling the amount of renewable fuel we now use. Today America imports nearly 60 percent of the crude oil it consumes. The Senator from Missouri defined in some detail the numbers. We continue to hold our economy, our national security, hostage to foreign oil.

This country consumes more than 300 billion gallons of crude oil a year. Of that, 165 billion gallons is refined into gasoline and diesel. This amendment says that by 2012, not less than 5 billion gallons of that 165 billion gallons shall come from renewable sources.

By enacting this legislation, we would replace 66 billion gallons of foreign crude oil by 2012, reduce foreign oil purchases by $34 billion, create more than 250,000 jobs nationwide, and boost U.S. farm income by more than $6 billion a year.

I join my other colleagues who have spoken this morning—and others who will speak today—to enthusiastically encourage all our colleagues to pay attention to the amendment, to be aware of its consequences, have some sense of why this is just not another renewable fuels amendment. It has dramatic implications for the future of the economy, for our national security, and our independence. It also helps America address the additional and important environmental challenges that lie ahead. This is an amendment about America's future.

I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I want to add my voice in support of the renewable fuels standard amendment that has been offered by the majority leader and the Democratic leader.

This may be a bit unconventional for a place like the Senate floor, but I want to begin my remarks by talking about duct tape. I am not talking about it in connection to homeland security, or even the fact that one of the largest producers, 3M Corporation, is in my home city of Saint Paul.

Duct tape is probably in every garage in Minnesota and on most work benches. Why? Because you can do so many things with it. For those of us who are mechanically challenged it is essential. It is cheap. It is simple. You can use it for temporary car repair, plumbing, picture hanging . . . I even heard of a guy who used it on a duct! The point is that it is valuable because it can do many things well.

The renewable fuels standard we are talking about today is a duct tape kind of proposal. It will decrease our dependence on foreign oil. It will help keep America's air and water cleaner. It will increase the income of our hard working farm families. And it will provide economic development and jobs for rural Minnesota. I am not sure if there is one other thing we could do as a national government that would do more good, for more people, at less expense and with no down side than set a renewable fuels standard. Allow me to explain in further detail.

Today 56 percent of our oil comes from foreign sources. As frightening as that statistic is, we are heading in the wrong direction: becoming more dependent as the years go by. When George Washington gave his Farewell Address, he warned us solemnly to ''avoid entangling alliances.'' We compromise the sovereignty of our Nation by giving other nations that powerful leverage on our people.

This reasonable renewable fuels standard would reduce our dependence on foreign oil by 1.6 billion barrels over the next 10 years. That would make us an even stronger nation because we would be winning back the power to determine our own destiny.

In Minnesota, we put a high value on clean air and clean water. Carbon monoxide, hydrocarbons, Nitric Oxide, and other toxins and particulates are responsible for countless environmental and health problems. As a matter of compassion, we must act to reduce these pollutants to avoid the suffering they cause. As a matter of health policy, the best way to contain costs is to prevent people from becoming sick in the first place.

Studies have shown that ethanol can reduce emissions of hydrocarbons by 20 percent and particulates by 40 percent. I believe biodiesel holds out the same promise. Right down the road from Minnesota in Chicago, ethanol use helped bring that huge city under the federal standard for ozone. Phasing out MBTE will have a dramatic impact all by itself.

As I spend time with Minnesota's farm families, they don't beat around the bush—whom they support, I might add, in large numbers. They don't care to listen to a lot of fancy speeches. They say, ''Senator you can help us if you do two things: lower our costs and raise our prices. We'll do the rest.'' The great folks who feed the world and undergird our economy—at great personal risk and sacrific—deserve to be heard and listened to.

Pure and simple: it is better to send corn and soybeans to ethanol and biodiesel plants to create energy then it is to send too much to the elevators and depress prices.

The Department of Agriculture estimates that ethanol adds 30 to 50 cents of additional value to every bushel of corn produced in the United States. That is a difference consumers of corn flakes will never notice, but it is a huge change at the margin for hundreds of thousands of hard working American farmers.

And make no mistake: farmers need help right now. In recent years, those who provide us with the safest, most abundant, most affordable food supply

in the world have been struggling with the lowest real net cash income since the Great Depression, record low prices, record high costs of production, and foreign tariffs and subsidies some 5 and 6 times higher than our own.

President Kennedy once said that ''the farmer is the only man in our economy who buys everything he buys at retail, sells everything he sells at wholesale, and pays the freight both ways.'' The RFS is an opportunity to turn things around for our farm families: to give them a chance to earn a living off the market while yielding huge economic, environmental and energy dividends.

As every Senator should know, farm policy and rural development go hand in glove. The key to so many rural communities is for them to reap a greater economic benefit from the things they produce. If they just harvest the crops or raise the cattle and watch them roll over the hill for someone else to process and profit from, that is not going to maximize economic development and job growth potential in the area. They need to add value to those products.

There are no better examples of this than ethanol and biodiesel. Let me talk for a moment about what many call the ''Minnesota Miracle.'' I hold it out to Members of other States as an incentive for what approving an RFS could mean to your communities.

The State of Minnesota leads the Nation in promoting the production and use of ethanol. Nearly all of Minnesota's 2.6 billion gallons of gasoline are blended with 10 percent ethanol, reducing fuel imports by 10 percent. Today, Minnesota boasts 14 ethanol plants—13 of which are owned by Minnesota farmers. And, what these 14 plants have produced—besides ethanol—is truly phenomenal: 40,000 jobs, over a half billion a year in economic activity, and $15 million in tax revenues.

Now, on a national scale, studies suggest that the RFS will, over the next decade, reduce our Nation's trade deficit by more than $34 billion, increase our gross domestic product by $156 billion, create more than 214,000 new jobs, expand households income by some $51 billion, increase net farm income by nearly $6 billion per year, while cleaning our air and water and displacing 1.6 billion barrels of foreign oil. In short, the RFS will allow Minnesotans to build on our State's success while creating new opportunity and promise throughout the country.

Mr. President, I am proud to stand here today in the shadow of the work Senator HAGEL has done, the work the chairman of the Energy Committee has done, and stand in support of the amendment offered by the majority leader and Democratic leader, an amendment that will promote energy independence, cleaner air and water, stronger farm prices, and viable rural communities. Renewable fuel standards will do all these things. That does duct tape one better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. LUGAR. Mr. President, I compliment the distinguished Senator from Minnesota not only on his remarkable statement, but likewise on the Minnesota miracle. The work in his State is truly a manifestation of all that can come from the legislation we are discussing today in terms of jobs, income for farmers and, most important, greater energy independence and cleaner air for our country.

I am delighted to join my colleague from Minnesota in presenting and sponsoring and commending the majority leader and the minority leader for presenting this legislation to us today.

I am a strong advocate of this initiative to establish a nationwide renewable fuels standard as a part of America's national energy policy. Moving from a hydrocarbon to a carbohydrate economy will increase energy independence, reduce oil imports, protect air and water, reduce greenhouse gas emissions, and stimulate rural economies. The renewable fuels amendment we are considering today does all of these things, which is why I regard it as an essential component of the Energy Policy Act of 2003.

The renewable fuels amendment is the culmination of years of effort. As a result of the hard work, today's amendment enjoys strong support from both parties and a broad array of interest groups.

Several years ago, Senator DASCHLE and I first introduced a bill creating a renewable fuels standard. It has been my privilege to speak with Senator DASCHLE for many years on behalf of this concept, in front of various groups in our country, as well as with our colleagues in the Senate. I have treasured my friendship with Senator DASCHLE on the Agriculture Committee of the Senate. There we have had many hearings and productive discussions. The Renewable Fuels Act of 2001, the bill Senator DASCHLE and I introduced, represented an important step toward reducing our dependence on foreign oil and improving our Nation's energy security. At the same time, this proposal went far toward protecting the environment, supporting rural economic development, and increasing the flexibility of the national fuel supply to reduce the impact of future price spikes. Last year Senator DASCHLE and I incorporated that legislation into the Senate Energy bill. I am hopeful this year my colleagues will again demonstrate that they appreciate the importance of the renewable fuels standard to our country, and I am confident we will do so.

When reflecting back on recent history, one trend that should disturb every American is our growing dependence on oil imports. Set that trend against the many political crises erupting in oil-rich regions around the world, and it is clear our addiction to oil must be curtailed. I believe part of the answer lies with the development of cheap, plentiful, renewable sources of energy. The current tax incentive for ethanol has helped foster creation of a strong domestic renewable fuels industry. But more needs to be done to reduce the cost of ethanol production and to make the commodity more competitive with fossil fuels. It is time for a nationwide renewable fuels standard.

Recent and prospective breakthroughs in genetic engineering and processing are radically changing the viability of ethanol as a transportation fuel. It is now possible to use biomass, meaning virtually any plant or plant product, to produce renewable fuels. So-called cellulosic ethanol may decisively reduce the cost of ethanol, to the point where petroleum products may soon face vigorous competition.

In 1999, James Woolsey, former director of the CIA, and a consultant on many important issues, and I coauthored an article in Foreign Affairs magazine that talked about our strategic need for energy independence—at least outlined how a biomass strategy, which included ethanol from many sources, was a critical part of that strategy.

In 1999, following publication of that article in Foreign Affairs, I introduced a bill that now drives many of these scientific breakthroughs. The Biomass Research and Development Act accelerated and coordinated the biomass research and development activities of Federal agencies. Soon after this bill was enacted into law as Title III of the Agricultural Risk Protection Act of 2000, a bill that came out of the Senate Agriculture Committee, its competitive research and development program began accelerating production of biofuels, biochemicals, and biopower. Today's amendment will build on that initiative in a very large way by offering an incentive to producers of cellulosic ethanol.

I am proud of the significant progress we have already made to support renewable fuels. We have made great strides toward strengthening our national security, improving our rural communities, and protecting our natural environment.

With today's amendment, we will move still closer to a safer and more prosperous tomorrow for our country and for the world. I strongly encourage my colleagues to support this important initiative.

I thank the Chair, and I yield the floor.

Mr. DOMENICI. 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. DOMENICI. 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. DOMENICI. Mr. President, I say to fellow Senators, we are on this bill

until 11:30 a.m. for purposes of discussing the pending amendment. So I say to anybody who wishes to discuss it, we have this additional time now. There may be time in the future, but this is assured time now for anybody who wishes to speak.

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

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

Mrs. FEINSTEIN. Mr. President, I want to take this opportunity to make a few comments as a member of the Energy Committee on the energy bill that is on the floor and which will be subject to amendment tomorrow morning. I believe the ethanol amendment will be taken up.

There is an overarching possibility in this energy bill. It can provide the opportunity to properly fix the badly broken energy market, to reduce our consumption of oil, and to increase energy production while protecting our environment and addressing climate change. But at this point, the Energy Policy Act of 2003 is missing much of what is needed for a balanced, comprehensive energy policy for this Nation.

I voted against the bill in the Energy Committee because of what is missing. I look forward to the opportunity to amend this legislation.

First, I believe the bill needs stronger consumer protection to fix our broken energy market and to prevent another energy crisis like the one we experienced in the West.

Second, we must increase the fuel efficiency of our vehicles to reduce the amount of oil we consume, to lessen the amount of carbon dioxide, the No. 1 greenhouse gas released into our atmosphere, and to save families and businesses money at the pump.

Third, we must increase our energy production while protecting our environment. This means not infringing on environmentally sensitive areas such as the Alaska National Wildlife Refuge or the water off the California and Florida coasts.

Fourth, we should address global warming and establish plans to combat climate change.

Fifth, we must encourage the development of new renewable power from solar, from wind, and from geothermal resources instead of continuing to subsidize traditional production from nuclear power, for example.

Three years ago this month, California's energy market began to spiral out of control. In May of 2000, families and businesses in San Diego saw their energy bill soar. The Western energy crisis forced every family and business to pay for more energy. The crisis forced the State of California into a severe budget shortfall. It forced the State's largest utility into bankruptcy and nearly bankrupted the second largest utility. Now, 3 years and $45 billion in cost later, we have learned how the energy market in California was gamed and abused.

In March, the Federal Energy Regulatory Commission issued the ''Final Report on Price Manipulation in Western Markets which confirmed that there was widespread and pervasive fraud and manipulation during the Western energy crisis. The abuse of our energy market was so pervasive and unlawful. Yet this energy bill does not go far enough to prevent another Western energy crisis and to curb illegal Enron-type manipulation.

Remember, this type of fraud and abuse was not limited to just Enron. There was fraud and abuse across the board, according to the Federal Energy Regulatory Commission. One of the best examples of this illegal behavior is demonstrated by the transcript from Reliant Energy that revealed how their traders intentionally withheld power from the California market in an attempt to increase prices. This is one of the most egregious examples of manipulation, and it is clear and convincing evidence of coordinated schemes to defraud consumers.

Let me read one part of the transcript to demonstrate the greed behind the market abuse by Reliant and its traders.

On June 20, 2000, two Reliant employees had the following conversation that revealed the company withheld power from the California market to drive prices up.

Reliant Operations Manager 1: I don't necessarily foresee those units being run the remainder of this week. In fact you will probably see, in fact I know, tomorrow we have all the units at Coolwater off.

The Coolwater plant is a 526 megawatt plant.

Reliant Plant Operator 2: Really?

Reliant Operations Manager 1: Potentially. Even number four. More due to some market manipulation attempts on our part. And so, on number four it probably wouldn't last long. It would probably be back on the next day, if not the day after that. Trying to uh. . .

Reliant Plant Operator 2: Trying to shorten supply, uh? That way the price on demand goes up.

Reliant Operations Manager 1: Well, we'll see.

Reliant Plant Operator 2: I can understand. That's cool.

Reliant Operations Manager 1: We've got some term positions that, you know, that would benefit.

Six months after this incident, as the Senate Energy Committee was attempting to get to the bottom of why energy prices were soaring in the West, the president and CEO of Reliant testified before Congress that the State of California ''has focused on an inaccurate perception of market manipulation.''

Reliant's president and CEO went on to say, ''We are proud of our contributions to keep generation running to try to meet the demand for power in California. Reliant Energy's plant and technical staffs have worked hard to maximize the performance of our generation.''

These transcripts prove otherwise and reveal the truth about market manipulation in the energy sector.

Yet FERC refused to find and consider all evidence of fraud and manipulation and the State of California was forced to take the commission to court to ensure FERC would carry out its public duty to fully investigate the western energy crisis and punish wrongdoing. Only when the Ninth Circuit Court of Appeals ruled FERC had to allow the California parties to collect and submit evidence did we find more instances of pervasive illegal behavior.

After a 100-day discovery period that ended March 3, 2003, the State of California, the California attorney general's office, and the state's largest utilities filed over 3,000 pages of evidence at the Federal Energy Regulatory Commission to show how fraud and manipulation was pervasive throughout the western energy crisis of 2000–2001. The market abuse was not limited to a few rogue traders at one firm, but was a widespread series of schemes perpetuated by many employees across most companies that supplied and traded in the West.

During their discovery period, the ''California parties'' found the following information:

Details on new specific incidents when energy companies intentionally held their plants offline to drive prices up during 2000 and 2001; new transcripts of conversations between energy company employees revealing an intent to defraud and manipulate the California market; new evidence of document destruction by energy companies to hide details of their behavior in the western energy market; and new evidence laying out possible anti-trust violations by energy companies.

I ask unaminous consent that a copy of the report my office issued when the ''Protective Order'' was lifted by the Federal Energy Regulatory Commission be printed in the RECORD.

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

NEW EVIDENCE THAT ENERGY COMPANIES BESIDES ENRON MANIPULATED THE WESTERN ENERGY MARKET

[Unofficial Report—Office of Senator Dianne Feinstein]

After a 100-day discovery period that ended March 3, 2003, the State of California, the California Attorney General's Office, and the state's largest utilities filed over 3,000 pages of evidence at the Federal Energy Regulatory Commission to show how fraud and manipulation was pervasive throughout the Western Energy Crisis of 2000–2001. The market abuse was not limited to a few rogue traders at one firm, but was a widespread series of schemes perpetuated by many employees across most companies that supplied and traded in the West.

HIGHLIGHTS OF THE INFORMATION FILED BY THE CALIFORNIA PARTIES

(This information from the California Parties was under a ''Protective Order'' at FERC.)

Details on new specific incidents when energy companies intentionally held their

plants offline to drive prices up during 2000 and 2001.

New transcripts of conversations between energy company employees revealing an intent to defraud and manipulate the California market.

Reliant knew about transcripts proving their employees held power offline, but the company sat on the evidence for over a year before turning them over to FERC. (CA Parties brief, p122, footnote 375/Exhibit CA–218).

New evidence of document destruction by energy companies to hide details of their behavior in the Western Energy Market.

New evidence laying out possible anti-trust violations by energy companies.

The filing by the California parties shows that there was an extensive and coordinated attempt by energy companies to game the Western market to drive prices up by engaging in the following:

(1) Withholding of Power—driving up prices by creating false shortages.

New evidence of Withholding of Power according to the California parties: (CA Parties brief, p28–31/Exhibit CA–9).

On August 15, 2000 Williams reported that its plant in Long Beach called Alamitos 7 was unavailable due to NO_X limitations, but AES's real-time logs from that day show the plant was shut down because Williams directed it to be.

Reliant failed to return its Etiwanda Unit 2 in Rancho Cucamonga to service for two days after repairs were completed on January 26, 2001, even though the ISO system was experiencing continuous Stage 3 emergencies in California.

Redondo Beach Unit 6 power plant was shut down by Williams and AES April 3–April 6, 2000. Although the ISO was told the plant was offline due to a boiler tube leak, the plant records indicate this was a planned shutdown and the leak was an excuse concocted two days later.

Dynegy shut down its El Segundo Unit 1 plant August 30–September 3, 2000 for repairs, but the repairs had been done and the plant was shut down to force prices up.

Mirant held its Pittsburgh Unit 1 plant offline until October 22, 2000 even though an external tube leak ended October 20, 2000.

Duke delayed returning Oakland Unit 1 to service after repairs to a lube oil cooler and a cooling fan in November, 2000 despite ISO-declared emergencies.

During an ISO-declared emergency December 19 and 20, 2000, Williams declared Redondo Unit 5 a forced outage due to a boiler tube leak. However, the control operator logs uncharacteristically put quotation marks around the outage reason, ''Blr. Tube Leak'' and later, after tests were done, the logs indicate that no leaks were found.

Reliant delayed reporting the end of an outage at its Ellwood Unit in Goleta for more than twelve hours during peak demand in early April 2001.

Between November 19 and December 5, 2000 Dynegy reported that its El Segundo 1 and 2 units (with a capacity of about 350 MW) were on ''forced outage,'' but these units were actually shutdown because Dynegy claimed its operating staff was on vacation. Forced outages should not include vacation days—especially during ISO emergencies, which occurred on November 19 and 20.

(2) Bidding to Exercise Market Power—suppliers bid higher after the California ISO declared emergencies, knowing the State would need power and be willing to pay any price to get it.

New evidence of Bidding to Exercise Market Power according to the California parties:

A Mirant email to eleven traders in July of 2000 reveals this strategy: ''load is avg above 40 thousand during peak. So, submit revised supp. Bids and 'stick-it to 'em!!' '' (CA Parties brief, p42–43/Exhibit CA–141).

(3) Scheduling of Bogus Load (aka ''Fat Boy'' or ''Inc-ing'')—suppliers submitted false load schedules to increase prices.

New evidence of Scheduling Bogus Load according to the California parties:

A Dynegy trader confirms that Dynegy's load deviation in August 2000 is ''probably because [the traders] are just doing some dummy load scheduling.'' (CA Parties brief, p48/Exhibit CA–202).

A conversation between a Mirant trader and a trader from Public Service of Colorado reveal a joint effort to engage in ''Fat Boy.''

The trader from Public Service of Colorado states, ''Why don't we just do something where we overschedule, overschedule load and share an upside, dude.''

The Mirant trader responds, ''That's fine.'' (CA Parties brief, p49/Exhibit CA–204)

A Sempra trader states Sempra should submit ''fake load'' to the day ahead market. (CA Parties brief, p49/Exhibit CA–71)

A Williams trading strategy is identified as ''scheduling bogus load.'' (CA Parties brief, p49/Exhibit CA–22).

An internal Powerex memo documents that Powerex entered into a contract with the explicit purpose of ''overscheduling'' and ''underscheduling'' and for congestion manipulation. (CA Parties brief, p49).

(4) Export-Import Games (aka ''Ricochet'' or ''Megawatt Laundering'')—suppliers exported power out of California and imported it back into the State in an attempt to sell power at inflated prices.

New evidence of Export-Import Games according to the California parties:

Powerex's head trader congratulated its daily traders on their successful use of strategies to buy-ahead and sell back real-time. (CA Parties brief, p53/Exhibit CA–40).

Reliant had ''camouflage transactions'' where the company sold power out of California day-ahead to Arizona and New Mexico utilities, and bought it back for sale in the real-time market. (CA Parties brief, p55/Exhibit CA–56).

(5) Congestion Games (aka ''Death Star'')—suppliers created false congestion and were then paid for relieving congestion without moving any power.

New evidence of Congestion Games according to the California parties:

Other names like ''Death Star'' were given to these schemes: EPMI_Star, CISO_Death, Curious and George, Red and Green, Hungry and Hippo, James and Dean or Chinook and Atlantic and SCEM_Loopy. (CA Parties brief, p59/Exhibit CA–1).

These congestion games were called ''free money.'' (CA Parties brief, p59/Exhibit CA–145).

A Mirant trader summed up the scheme, ''I mean its just kind of loop-t-looping but it's making money . . . [laugh].'' (CA Parties brief, p48/Exhibit CA–204).

(6) Double-Selling—suppliers sold reserves, but then failed to keep those reserves available for the ISO.

(7) Selling of Non-Existent Ancillary Services (aka ''Get Shorty'')—suppliers sold resources that were either already committed to other sales or incapable of being provided.

(8) Sharing of Non-Public Generation Outage Information—the largest suppliers in California shared information from a company called Industrial Information Resources that provided sellers detailed, non-public information on daily plant outages. A one-year subscription to Industrial Information Resources cost $70,000. Providing multiple competitors the same, non-public, outage information signals all competitors to act in a parallel manner.

New evidence of Sharing of Non-Public Information according to the California parties:

Duke energy traders called Industrial Information Resources ''the mole.''

For example, Duke trader James Stebbins emailed: ''I just heard back from the mole. He is reporting that the PV3 will be coming back on line 6 days earlier than expected. The new return date is March 3. Good luck and happy selling.'' (CA Parties brief, p70/Exhibit CA–95 and Exhibit CA–253).

(9) Collusion Among Sellers—sellers were jointly implementing or facilitating Enron-type trading strategies.

New evidence of Collusion Among Sellers according to the California parties:

Glendale traders learned manipulation from Enron and Coral traders. (CA Parties brief, p77/Exhibit CA–105 and Exhibit CA–1).

Sempra provided Coral with advance information regarding the status of a plant. (CA Parties brief, p78/Exhibit CA–1).

Transcripts of calls show traders from Public Service of Colorado and Mirant discussing ''sharing'' or ''splitting'' ''the upside. (CA Parties brief, p79/Exhibit CA–204).

(10) Manipulation of $NONO_X$ Emission Market—sellers manipulated the market for $NONO_X$ emissions in the South Coast Air Quality Management District through a series of wash trades that created the appearance of a dramatic price increase that may have been fabricated.

For example, Dynegy, together with AES and others, entered into a series of trades of $NONO_X$ credits in July and August 2000 by which Dynegy would sell a large quality of credits and then simultaneously buy back a smaller quantity of credits at a higher per credit price. (CA Parties brief, p90–93/Exhibit CA–11).

(11) Wanton Document Destruction—sellers (not just Enron) flagrantly destroyed documents detailing behavior in the Western Energy Market.

New evidence of Wanton Document Destruction according to the California parties:

Mirant—an ex-Mirant employee disclosed that he was instructed to delete certain files relating to the California markets from hard drives and that key Mirant executives were instructed to turn in their laptops so that Mirant could clear their hard drives. (CA Parties, brief, p129/Exhibit CA–178).

City of Glendale, California—A Glendale employee, Jack Dolan, told an ex-Glendale employee, Carl Edginton, that Mr. Edginton could destroy one of the documents that contained information about Enron's gaming strategies. (CA Parties brief, p129–130/Exhibit CA–213).

(12) Negligent Document Destruction—sellers failed to retain documents detailing behavior in the Western Energy Market in accordance with FERC rules and the Federal Power Act.

According to the California parties, new evidence of Negligent Document Destruction by: Power, Portland General Electric, Reliant, Bonneville Power Administration, City of Glendale, Northern California Power Agency. (CA Parties brief, p130–132).

(13) Traders Did Not Care How High Prices Went—sellers said that it did not matter how high prices went, as long as Californians paid and generators made money.

New evidence Traders Did Not Care How High Prices Went in the filing:

Conversation between two Reliant employees on May 22, 2000:

Kevin: ''Hey, guys, you know when we might follow rules? If there's some sort of penalty.''

Walter: ''That's right.''

Kevin: ''I would never suggest it, but it seems like the writing would be on the wall.''

Walter: ''Well, I mean, there's—you know, our position is if it's a reliability issue, then the reliability comes over the economics.

Kevin: ''Right.''

Walter: ''So we don't have a problem with that. But it needs to be a reliability issue. If it's economics, and by God, that's what rules.''

Kevin: ''You'll let the California rate payers pay.''

Walter: ''That's right. I don't have a problem with that. I have no guilty conscience about that.''

Kevin: ''All right, man.'' (CA Parties brief, p110–111/Exhibit CA–239).

Mrs. FEINSTEIN. Mr. President, the evidence of fraud and abuse submitted is really quite extraordinary.

Yet this energy bill doesn't prevent the type of gaming that went on during the energy crisis. The bill only bans one type of specific manipulation—wash trades in the electricity market—but it does not address the natural gas market, nor does it prevent other forms of fraud and manipulation that took place in California and were detailed in memos released by Enron—''Fat Boy,'' ''Ricochet,'' ''Death Star,'' and ''Get Shorty.''

Furthermore, I am concerned that at this time of great crisis in the energy industry, this energy legislation rolls back the Public Utility Holding Company Act—PUCHA—without giving FERC the ability to review mergers and acquisitions in the energy sector. I will support an amendment to be offered by Senator BINGAMAN on this issue to ensure the consumer protections granted by PUCHA are not repealed.

I am also disappointed that this bill does not increased automobile fuel efficiency to reduce our consumption of oil. The single most effective way to reduce our dependence on foreign oil is to equalize the fuel economy of SUVs and light trucks with that of passenger cars.

Senator OLYMPIA SNOWE and I introduced bipartisan legislation in January to close the SUV Loophole and since that time 16 other Senators have signed onto our bill. Closing the SUV loophole would: Save the U.S. 1 million barrels of oil a day and reduce our dependence on foreign oil imports by 10 percent; prevent about 240 million tons of carbon dioxide—the top greenhouse gas and biggest single cause of global warming—from entering the atmosphere each year; and save SUV and light duty truck owners hundreds of dollars each year in gasoline costs.

Corporate Average Fuel Economy—CAFE—standards were first established in 1975. At that time, light trucks made up only a small percentage of the vehicles on the road—they were used mostly for agriculture and commerce, not as passenger cars.

Today, our roads look much different—SUVs and light duty trucks comprise more than half of the new car sales in the United States.

As a result, the overall fuel economy of our nation's fleet is the lowest it has been in two decades—because fuel economy standards for these vehicles are so much lower than they are for other passenger vehicles.

Rather than increasing fuel economy, however, this energy bill makes it more difficult for the Department of Transportation to increase CAFE standards in the future by including a new list of criteria the Department must consider when revising standards.

We need to be responsible and increase fuel efficiency, not create more barriers to increase CAFE standards.

I believe a comprehensive energy policy can promote the development of new energy supplies while protecting our most precious natural areas.

Yet this energy bill requires an inventory of all oil and gas resources under the Outer Continental Shelf. This inventory is a thinly veiled attempt to undermine long-standing and bipartisan moratorium protection. Areas off the West and East Coasts are currently off limits to drilling, and we do not want that to change.

Even if we ignore the implications of this study on moratorium areas, the inventory itself threatens precious coastal resources with invasive technologies. The coastal states have made it clear that they oppose oil development in these areas, and I believe the States' views should be respected.

I strongly believe that a comprehensive energy bill cannot ignore global climate change, yet this bill does nothing to decrease global warming.

The International Panel on Climate Change estimates that the Earth's average temperature could rise by as much as 10 degrees in the next 100 years—the most rapid change in 10,000 years.

This would have a major effect on our way of life. It would melt the polar ice caps, decimate our coastal cities, and cause global climate change.

We are already seeing the effects of warming.

In November, the Los Angeles Times published an article about the vanishing glaciers of Glacier National Park in Montana. Over a century ago, 150 of these magnificent glaciers could be seen on the high cliffs and jagged peaks of the surrounding mountains of the park. Today, there are only 35. And these 35 glaciers that remain today are disintegrating so quickly that scientists estimate the park will have no glaciers in 30 years.

This melting seen in Glacier National Park can also be seen around the world, from the snows of Mt. Kilimanjaro in Tanzania to the ice fields beneath Mt. Everest in the Himalayas. Experts also predict that glaciers in the high Andes, the Swiss Alps, and even Iceland could disappear in coming decades as well. These dwindling glaciers offer the clearest and most visible sign of climate change in America and the rest of the world.

Yet the administration has walked away from the negotiating table for the Kyoto Protocol. This is a big mistake. The United States is now the largest energy consumer in the world, with 4 percent of the world's population using 25 percent of the planet's energy. We should be a leader when it comes to combating global warming.

I strongly believe that we can do more to encourage the development of renewable power. Solar, wind, geothermal, and biomass are generating electricity for homes and businesses nationwide and we need an energy policy that not only provides tax incentives for their continued development, but also requires their use. I strongly believe it is in the public interest for our nation to stop subsidizing costly nuclear plants and require greater development of renewable resources.

However, this energy bill does not include a Renewable Portfolio Standard to require the use of a certain percentage of energy to be generated from renewable resources. I support such a standard and believe it should be part of our energy policy. Unfortunately the energy bill currently has an over-reliance on promoting traditional energy resources.

Take the nuclear power section of the bill for example. The energy bill provides a new subsidy program to provide loans, loan guarantees, and other forms of financial assistance to subsidize the construction of new nuclear plants. These subsidies will be allowed to cover up to half the cost of developing and constructing a nuclear power plant, including any costs resulting from licensing and regulatory delays. Since nuclear power plants cost approximately $6 billion to build, these subsidies could inflict a tremendous burden on the taxpayer.

For these reasons I voted against this energy bill in the Senate Energy Committee. I look forward to the opportunity to improve it on the Floor.

I strongly believe our nation needs an energy policy that will protect consumers, reduce our dependence on foreign oil, and promote new energy development while protecting our environment. If our energy legislation cannot accomplish these objectives it will be an unbalanced and incomplete energy policy.

Thank you and I yield the floor.

Mr. INHOFE. Mr. President, over the next few days, the Senate will consider legislation that will become the fuels title of comprehensive energy legislation to be enacted by the Congress later this year. As I have stated on other occasions, I firmly believe that the Nation needs comprehensive energy legislation and needs it quickly. One of our largest national security problems is our current energy dependence on foreign countries. I strongly agree with Deputy Secretary of Defense Paul Wolfowitz, who has called our energy dependence ''a serious strategic issue.''

I think that most Members of the Senate would agree that expeditious action is needed to address our energy dependence concerns. There is much less agreement, however, on the specific fuels provisions that are best suited to respond to those concerns. As chairman of the Environment and Public Works Committee, I have worked

closely with the issue surrounding this amendment and the impact they will have on our environment, as well as the economy. I understand the valid concerns on all sides of the debate.

This amendment represents a compromise on a number of contentious issues. I want to thank the members and their staffs for their respective roles in shaping this compromise, particularly the majority and minority leaders, and Senator VOINOVICH, the Chairman of the Clean Air Subcommittee, which has jurisdiction over this amendment.

This amendment has numerous environmental protection provisions, and, with the repeal of the oxygenate mandate, positive steps in removing barriers to allow refineries to make clean burning and affordable gasoline.

As with all compromises, there are provisions in the document that are opposed by various committee members, including myself. Despite that, I hope we can move the proposal out of the Senate with a minimum of controversy. To that end, I intend to support the proposal against amendments even in circumstances where I might agree with the substance of the amendment. I urge others to do the same.

This is something that has been of great concern for this country. I became involved with this issue of our energy dependence way back in the early 1980s when then-Secretary of Interior, Don Hodel, and I traveled and talked about the national security ramifications of our dependence on foreign countries for our ability to fight a war. Certainly, I felt after the 1991 war and after the most recent conflict in Iraq that people would be sensitive to that. I think the amendment that we are offering is one that is going to be of great help in getting us to lessen our reliance on foreign countries for our ability to fight a war.

I look at this provision of the energy bill as a very significant provision. As I said, there are parts of it and provisions that, as chairman of the Environment and Public Works Committee, I do not agree with. However, I strongly urge the support of this provision to the energy bill and hope we can do it with minimum or with no amendments.

I thank the Chair. I yield the floor.

Mr. CAMPBELL. Mr. President, I rise today in support of S. 14, the comprehensive energy bill.

The chairman and all the members of the Energy and Natural Resources Committee worked hard to produce a comprehensive energy bill. While no legislation is perfect, S. 14 is the product of careful debate and was subject to tough scrutiny through the committee process.

Where the committee was uncertain or where significant consensus on particular issues proved difficult, deference was given to Senators so those issues could be addressed before the full Senate.

The Committee-reported energy bill represents a careful balance of diverse and complex issues, and I am proud to have had a role in the process.

No matter one's political leanings or personal opinions, two irrefutable facts are abundantly clear. First, energy is needed to fuel the economy. Second, America needs more energy.

Between 1991 and 2000, Americans used 17 percent more energy than in the previous decade, while during that same period, domestic energy production rose by only 2.3 percent.

Further, our Nation's energy consumption is projected to increase 32 percent by 2020.

Our projected demand increase translates to projected price increases. The Energy Information Administration estimates that oil prices will increase 20 percent and natural gas prices will increase more than 50 percent in the next 25 years. Price increases like these emphasize our need to embrace policies that consider our Nation's diverse fuel mix. This bill correctly encourages the consideration of all of our energy sources.

Some in Congress would pursue policies choosing certain energy sources over others, resulting in fuel switching. I oppose such policies for several reasons. Principally, however, I oppose policies that would significantly reduce our Nation's fuel options because such policies would have catastrophic effects on our economy. It should be noted that the EIA projections cited earlier all assume a diverse portfolio of energy sources. We can only imagine the cost to ratepayers and the Nation if an energy source, such as coal, were no longer a viable option.

To consider all of our energy options requires more than just lip service. It means taking action based upon stated positions.

The Indian Energy Title of the bill moves beyond lip service. It incorporates several key reforms based on fundamental principles of American liberty and Indian self-determination.

I imagine that many, if not all of the members of this body believe—or at least say they believe—in the right to self-determination. Many of my colleagues celebrate and support the rights of indigenous peoples in the context of international law. In the case of Iraq, all agree that the Iraqi Government must be comprised of and run by Iraqis, for Iraqis, without U.S. interference.

Unfortunately, if we are to ask the very same members to apply those recognized principles at home to our Nation's own indigenous peoples, their resolve and belief in self-governance seems to disintegrate.

The Indian Energy Title in the bill before the Senate is not merely a reiteration of touchy-feely concepts. Concepts without action do not help people. And despite what many Americans, and many in this Chamber believe about Indian gaming and a few rich tribes, the truth is that Indians are still the poorest people in America; still have the worst health care; still have the fewest educational opportunities; and Indian children still suffer from sniffing glue, using ''canned heat,'' and committing suicide.

The truth is often uncomfortable. The truth is undeniable.

The Indian provisions in S. 14 are designed not only to respect tribes' right to self-determination, but to unshackle them from a regulatory and bureaucratic system that doesn't care whether an energy project goes forward; doesn't care whether a tribe's energy partner decides the bureaucratic hurdles are too high; and doesn't care whether jobs will be created to benefit Indians.

Title III provides financial assistance, loan guarantees, hydro and wind power and wind power studies, and most importantly a liberalization of the Indian land leasing process.

These provisions are wholly voluntary, allowing participating tribes greater flexibility in exercising their right to self-determination.

Title III contains no NEPA exemptions and the Indian Energy Title does not circumvent environmental protections. What it does do, however, is empower Indian tribes with long-overdue authority to manage their land while, ''ensuring compliance with all applicable environmental laws.''

The Indian energy provisions in S. 14 accepts that unfortunate reality and provides critical economic development opportunities to participating tribes.

The chairman has a difficult task—to produce a balanced comprehensive energy bill during a Presidential election cycle. Politics and rhetoric run highest at times like these.

Although it has happened since the days of the frontier, the powerful and wealthy should not manipulate the disenfranchised for political gain.

I sincerely hope that my colleagues in the Senate regard the Indian energy provisions as what they are—a tool to exercise self-determination.

If it is good enough for Iraqis, shouldn't it be good enough for Americans?

Mr. NELSON of Nebraska. Mr. President, this important renewable fuels legislation is one of the pillars for economic development for rural America—one segment of the population that has lagged behind during the economic surge of the 1990s and is suffering under the combined effects of the current economic slowdown and a 2-year devastating drought—Drought David.

This legislation is important for rural America. Last year, we completed the farm bill—the first part of the economic revitalization plan for rural America. And while the Midwest has been blessed with rain over the past month, we continue to struggle with the ongoing effects of drought. Economic stimulus can come in many forms, and renewable fuels is certainly one of the viable options for increased economic stimulus in rural America, especially in my home State of Nebraska.

We need to be working hard to craft a comprehensive rural development plan that will spur investment in agribusiness and promote economic activity in the agriculture center. This bill, the Fuels Security Act of 2003, is an important part of such a rural development plan.

It is clear that use of ethanol, as part of a renewable fuels standard is a win-win-win situation: a win for farmers, a win for consumers, and a win for the environment. That is why I rise as an original cosponsor and strong supporter this renewable fuels legislation.

If passed, the Fuels Security Act will establish a 2.3-billion-gallon renewable fuels standard in 2004, growing every year until it reaches 5 billion gallons by 2012. There are many benefits to this legislation.

It will dispute 1.6 billion barrels of oil over the next decade; reduce our trade deficit by $34.1 billion; increase new investment in rural communities by more than $5.3 billion; boost the demand for feed grains and soybeans by more than 1.5 billion bushels over the next decade; create more than 214,000 new jobs throughout the U.S. economy; and expand household income by an additional $51.7 billion over the next decade.

It is quite apparent that increased use of ethanol will do much to boost a struggling U.S. agriculture economy and will help establish a more sound national energy policy.

The greater production of ethanol will also be beneficial to the environment. Studies show ethanol reduces emissions of carbon monoxide and hydrocarbons by 20 percent and particulates by 40 percent in 1990 and newer vehicles. In 2001 ethanol reduced greenhouse gas emissions by 3.6 million tons, the equivalent of removing more than 520,000 vehicles from the road.

A choice for ethanol is a choice for America, and its energy consumers, its farmers and its environment.

Enactment of the Fuel Security Act—along with other provisions in this bill that emphasize new sources of energy production from renewables like wind power, as well as conservation to further reduce our dependence upon foreign sources of energy—will help us to reverse our 100-year-old reliance on fossil fuels a more pressing concern than ever given the possibility of military conflict in the Mideast and the continuing economic turmoil in Venezuela.

I am unabashedly proud of what my home State has accomplished in this area. Within the State of Nebraska, during the period from 1991 to 2001, seven ethanol plants were constructed and several of these facilities were expanded more than once during the decade. Specific benefits of the ethanol program in Nebraska include: $11.15 billion in new capital investment in ethanol processing plants; 1,005 permanent jobs at the ethanol facilities and 5,115 induced jobs directly related to plant construction, operation, and maintenance—the permanent jobs alone generate an annual payroll of $44 million——and more than 210 million bushels of corn and grain sorghum is processed at the plants annually. These economic benefits and others have increased each year during the past decade due to plant expansion, employment increases, and additional capital investment.

If each State produces 10 percent of its own domestic, renewable fuel, as Nebraska does, America will have turned the corner away from dependence on foreign sources of energy.

When you take a hard look at the facts, you will see that this legislation is nothing but beneficial for America. The Fuels Security Act is balanced, comprehensive, and is the result of the dedication of so many, especially Senator DASCHLE and Senator LUGAR.

Now I ask my colleagues to join me in promoting new opportunities for the technologies that will put our Nation and the world's transportation fuels on solid, sustainable, and environmentally enhancing ground. We owe it to our country now—and to future generations-in pass this legislation.

FOREIGN INTELLIGENCE SURVEILLANCE ACT

The PRESIDING OFFICER. Under the previous order, the hour of 11:30 having arrived, S. 113 is referred to the Committee on Intelligence, and the committee is discharged from further consideration of the measure, and the Senate will now proceed to consider the measure, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 113) to exclude United States persons from the definition of foreign power under the Foreign Intelligence Surveillance Act of 1978 relating to international terrorism.

The Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to the title and an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 113

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. EXCLUSION OF UNITED STATES PERSONS FROM DEFINITION OF FOREIGN POWER IN FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 RELATING TO INTERNATIONAL TERRORISM.

[Paragraph (4) of section 101(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(a)) is amended to read as follows:

[''(4) a person, other than a United States person, or group that is engaged in international terrorism or activities in preparation therefor;'']

SECTION 1. TREATMENT AS AGENT OF A FOREIGN POWER UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 OF NON-UNITED STATES PERSONS WHO ENGAGE IN INTERNATIONAL TERRORISM WITHOUT AFFILIATION WITH INTERNATIONAL TERRORIST GROUPS.

(a) IN GENERAL.—Section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)) is amended by adding at the end the following new subparagraph:

''(C) engages in international terrorism or activities in preparation therefor; or''.

(b) SUNSET.—The amendment made by subsection (a) shall be subject to the sunset provision in section 224 of the USA PATRIOT Act of 2001 (Public Law 107–56; 115 Stat. 295), including the exception provided in subsection (b) of such section 224.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I appreciate the opportunity to take up this bill. It is under a unanimous consent agreement. Pursuant to that agreement, we are going to have some opening statements. I will take about 15 minutes and then Senator SCHUMER, the cosponsor of the amendment, will be presenting his remarks. After that, anyone who would like to speak for or against this bill can do so.

There will be two amendments in order. One will be an accepted amendment offered by the Senator from Wisconsin, Mr. FEINGOLD, and another will be offered by Senator FEINSTEIN of California on which there is, I believe, a total of 4 hours authorized for debate. I do not think we will need that much time, but when the time comes, I urge my colleagues to oppose and defeat the Feinstein amendment so we can go to final passage of this legislation.

I will briefly describe what the bill does and why we need it. Then I will get into some of the procedure involved. It is actually very simple. It involves an existing law that we passed in 1978 called the Foreign Intelligence Surveillance Act, known by the acronym FISA. FISA allows us to get warrants, among other things, and allows us to surveil people we suspect of committing acts of terrorism against us; for example, to get a warrant to search their computer or their home.

There are two instances where the law currently applies. The underlying predicate is that there has to be probable cause that somebody is committing, about to commit, or planning to commit some kind of criminal act, a terrorism kind of act. It applies to two kinds of people: somebody who is either working for a foreign government or somebody who is working for a foreign terrorist organization.

That leaves a little loophole because there are some terrorists who are not on the membership list, shall we say, or who are not card-carrying members of a foreign terrorist organization or a foreign government; people such as Zacarias Moussaoui, for example, whom we now believe to have been loosely involved in the al-Qaida attack of September 11.

At the time, it was not possible to prove that he was involved with a foreign intelligence organization. It may

well be that at the end of the day he was, in fact, a lone wolf, operating on his own, but very loosely affiliated with the radical Islamic movement which has underpinned a lot of the terrorism which threatens the United States and the rest of the world today.

The law as written in 1978 was intended to apply to a very specific group of people, the Soviet spies, for example, or the Baader-Meinhof gang or the Red Brigade or the Red Army. There were a lot of these organizations back then, and they were very tightly knit organizations. If somebody was involved in one of these groups, they were involved. But today's radical Islamic movement around the world that associates itself with terrorism is much more amorphous. As I factitiously said, these people do not have cards identifying themselves as members of these organizations. They are people who hate the West and the United States. They move in and out of the different countries of the world. They will take training in a certain place. They will affiliate a little while with a group and then move on to support some other group.

The bottom line is that it is very difficult, sometimes impossible, to prove that they are affiliated with a specific group. In some cases, they are not. They are simply acting on their own. But they are still terrorists. They are still foreign terrorists. They still mean to do us harm on the international stage and should be covered by the Foreign Intelligence Surveillance Act.

We close this loophole by providing that not only does it cover the person working for a foreign government, or who we can prove at that point is working for a foreign terrorist organization, it also includes the so-called lone wolf terrorist, or the individual we cannot yet prove is directly affiliated with one of these amorphous groups. That is really all the bill does.

I will give a specific example. I mentioned Zacarias Moussaoui. Remember all of the criticism. He was a person who was taking flying lessons. It was under very suspicious circumstances. We understood this prior to September 11. There were people who wanted to get a Foreign Intelligence Surveillance Act warrant to search his computer. It went to the FBI, and somebody in the FBI concluded that, yes, all of this information looked good in the warrant except that they could not specifically tie him to a specific international group. Quite a bit of time was used following up leads that led to some group of Chechen rebels, but that ended up to be kind of a dry hole. Meanwhile, the attack of September 11 occurred.

Immediately after that attack, we were able to get the warrant. His case is pending in Northern Virginia at this time. He was not able to hook up with the attackers of September 11, but clearly his is an example of a case to which this kind of provision should apply.

I will quote something from some of the testimony that we had with regard to the need for this legislation. Spike Bowman, who is the Deputy General Counsel of the FBI, testified at a Senate Select Committee on Intelligence hearing on the predecessor bill to the one that is before us right now. I will quote at length from his testimony. He said:

> When FISA was enacted, terrorism was very different from what we see today. In the 1970s, terrorism more often targeted individuals, often carefully selected. This was the usual pattern of the Japanese Red Army, the Red Brigades and similar organizations listed by name in the legislative history of FISA. Today we see terrorism far more lethal and far more indiscriminate than could have been imagined in 1978. It takes only the events of the September 11, 2001, to fully comprehend the difference of a couple of decades. But there is another difference as well. Where we once saw terrorism formed solely around organized groups, today we often see individuals willing to commit indiscriminate acts of terror. It may be that these individuals are affiliated with groups that we do not see, but it may be that they are simply radicals who desire to bring about destruction.
>
> We are increasingly seeing terrorist suspects who appear to operate at a distance from these organizations. In perhaps an oversimplification, but illustrative nevertheless, what we see today are (1) agents of foreign powers in the traditional sense who are associated with some organization or discernible group, (2) individuals who appear to have connections with multiple terrorist organizations but who do not appear to owe any allegiance to any one of them, but rather owe allegiance to the International Jihad movement, and (3) individuals who appear to be personally oriented toward terrorism but with whom there is no known connection to a foreign power.
>
> This phenomenon which we have seen . . . growing for the past two or three years, appears to stem from a social movement that began some imprecise time, but certainly more than a decade ago. It is a global phenomenon which the FBI refers to as the International Jihad Movement. By way of background we believe we can see the contemporary development of this movement, and its focus on terrorism, rooted in the Soviet invasion of Afghanistan.
>
> During the decade-long Soviet/Afghan conflict, anywhere from 10,000 to 25,000 Muslim fighters representing some forty-three countries put aside substantial cultural differences to fight alongside each other in Afghanistan. The force drawing them together was the Islamic concept of ''umma'' or Muslim community. In this concept, nationalism is secondary to the Muslim community as a whole. As a result, Muslims from disparate cultures trained together, formed relationships, sometimes assembled in groups and otherwise would have been at odds with one another[,] and acquired common ideologies. . . .
>
> Following the withdrawal of the Soviet forces in Afghanistan, many of these fighters returned to their homelands, but they returned with new skills and dangerous ideas. They now had newly acquired terrorist training as guerilla warfare [had been] the only way they could combat the more advanced Soviet forces.
>
> Information from a variety of sources repeatedly carries the theme from Islamic radicals that expresses the opinion that we just don't get it. Terrorists world-wide speak of jihad and wonder why the western world is focused on groups rather than on concepts that make them a community.
>
> The lesson to be taken from how [Islamic terrorists share information] is that al-Qaida is far less a large organization than a facilitator, sometimes orchestrator of Islamic militants around the globe. These militants are linked by ideas and goals, not by organizational structure.
>
> The United States and its allies, to include law enforcement and intelligence components worldwide[,] have had an impact on the terrorists, but [the terrorists] are adapting to changing circumstances. Speaking solely from an operational perspective, investigation of these individuals who have no clear connection to organized terrorism, or tenuous ties to multiple organizations, is becoming increasingly difficult. The current FISA statute has served the Nation well, but the international Jihad movement demonstrates the need to consider whether a different formulation is needed to address the contemporary terrorist problem.

Of course, the different way we are approaching it is by adding a third element to the FISA statute. If you are a non-United States person and otherwise we have probable cause to believe you are planning an act of or executing an act of terrorism, we have the right to seek a warrant in the FISA court to search you, surveil you, whatever the warrant might request.

That is the essence of this legislation. As I said, when FISA was enacted in 1978, this international movement around an idea had not yet evolved and we were focused on organizations. Now we need to add to the statute, in addition to nations and specific organizations, non-United States persons—in other words, foreign persons—who we believe are carrying out some terrorist plan with international roots, directed at the United States, sufficient to bring it under the aegis of the FISA statute.

It is the responsibility of Congress to adapt our laws to these changes. It is this challenge that Senator SCHUMER and I are attempting to address by this amendment.

I introduced this bill with Senator SCHUMER in the 107th Congress on June 5, 2002, so it has been around almost a full year. The current bill is the identical bill introduced in the previous Congress. We held a Select Committee on Interrogation hearing July 2002, the testimony from which I just quoted, and we heard testimony from six witnesses.

There was no Judiciary markup in the previous Congress, but in the 108th Congress, when we reintroduced the bill January 9, the Senate Judiciary Committee held a markup. This bill, by the way, was cosponsored by Chairman HATCH, Senators DEWINE, SCHUMER, myself, CHAMBLISS, SESSIONS, and there may be others of whom I am not aware.

March 6, the Judiciary Committee marked up the bill at an executive session and adopted a substitute amendment, which is the bill we have before the Senate now, rejected a Feingold amendment by a vote of 11 to 4, and voted to report the bill unanimously by a vote of 19 to 0 to the Senate. That is where we are today.

We hope to call anyone who has an interest in this to the floor to express their ideas. As I say, we are going to

accept one amendment and we will be debating a second amendment, which I hope we defeat. There will be a break in our consideration here for some other business in the middle of the day. We will return in midafternoon to complete the work on the bill. It should be done by the late afternoon.

Until Senator SCHUMER arrives, I make another point. There has been a worry on the part of some that this expands the Foreign Intelligence Surveillance Act to private American citizens. I make it crystal clear that is not true.

By definition, we could not do that. This is a law that is only justified because it relates to international terrorism. So if you come here from a foreign country, you are a non-U.S. person, you come from a foreign country, intending to do harm to Americans, as part of this international movement, whether you are a member of some specific organization or not, the act will be allowed to be used to determine whether we should take further action against you. It is not pertaining to U.S. citizens; it is only to non-U.S. citizens and only in this particular context.

Second, you cannot just do this willy-nilly, like every other warrant. Whether under FISA or not, we have to have probable cause. That requirement is not changed one iota. If anyone suggests there is anything improper, certainly it is not unconstitutional, but to the extent anyone suggests that we are ready to recite the reasons why, that is not true.

I note the Department of Justice has sent a letter announcing its support for this legislation. Among those testifying in favor of it, the U.S. Attorney General, the Director of the Bureau of Investigation, former CIA Director, and any number of officials in our intelligence and law enforcement community have endorsed the bill.

I direct Members' attention to a letter I will later put into the RECORD, dated July 31, 2002, which presented the Department of Justice's views on the bill and announced its support for the legislation. It provides a detailed analysis of this question about the fourth amendment and whether or not there would be any constitutional issues.

The Department concluded that the bill would satisfy constitutional requirements specifically related to the fourth amendment. In particular, the Department emphasized that anyone monitored pursuant to the bill would be someone who had at the very least been involved in terrorist acts that transcends national boundaries in term of the means they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which the perpetrators operate or seek asylum.

As a result, it would still be limited to collecting foreign intelligence for the international responsibilities of the United States and the duties of the Federal Government to the States in matters involving foreign terrorism, to wit, protecting the American citizens from people who come here to do us harm.

Let me conclude these remarks by noting that I have enjoyed the cooperation, as usual, of my colleague who serves on the Judiciary Committee, the Senator from New York, Mr. SCHUMER, who has been a strong advocate of this kind of provision for a long time and whose assistance in this matter has been extraordinarily helpful.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, first, I thank my colleague, Senator KYL from Arizona, for his great work on this and many other issues.

We live in a new world. It is a post-September 11 world. We have to adjust to those realities. I believe we can do both, have security and liberty, the great concern of our Founding Fathers. I think this bill, in a careful and thoughtful way, readjusts that balance.

My colleague from Arizona has been a leader on these issues. We do not always agree, but we often do. It is a pleasure to work with him. His persistence and dedication to making this country secure and maintaining its freedom at the same time is something I share and I respect.

As I mentioned, the age-old debate between security and freedom is at the nub of the Constitution. It was probably debated more by the Founding Fathers than any other issue. They realized that in times of crisis, in times of war, in times of attack, the pendulum could swing more to the security side and at other times to the freedom side. They realized, as Benjamin Franklin said, that giving up even an ounce of precious freedom is a very serious thing to do.

FISA is a debate about that. While I certainly believe, as I think most of my colleagues do, given the fact that what we have learned since September 11, that terrorists can strike in our heartland, that small groups of people empowered by technology can do the kind of damage we have never seen before, which my city suffered on September 11. We remember the losses every day. We do have to reexamine this, particularly when there has been one law for people overseas and one law for people in this country because the walls have changed.

That is a general debate on FISA. I know some of my colleagues have wanted to do that today. My colleague from Wisconsin says the law has shifted too far one way. My colleague from Utah thinks it has shifted the other way. Senator KYL and I are not debating that. We do not give up any liberty in this bill. The very standards that are now in the law with FISA remain, standards of what must be done to get a FISA warrant. Those do not change. The only change is our recognition that in these new post–9/11 years, technology has allowed small groups unknown before, or even lone wolf individuals, to commit terrorism, and if they are doing the same thing as established terrorist groups or established terrorist nations, there seems to be no reason why they shouldn't be susceptible to the same type of surveillance of other groups. That is at the nub of this issue.

We are informed by history. Again, those who say don't do anything to change don't look at history, in my judgment. We learned from the disclosures regarding Zacarias Moussaoui, the so-called 20th hijacker, that the FBI had abundant reason to be suspicious of him before 9/11, but they did not act, they did not do what Agent Rowley wanted them to do. She, of course, has been heralded as a great leader and a great American for what she has done, and I join in that. But they didn't want to do what she wanted, which was pursue a warrant to dig up evidence that may have been the thread which, if pulled, would have unraveled the terrorists' plans.

The anguish she felt then, and so many of us feel afterwards, that this might have been stopped but wasn't because of a provision in the FISA law that quickly became archaic as terrorists advanced and we learned that small groups could do such damage, is what motivates this legislation.

One reason we have been given—and Agent Rowley agrees with this, I believe—why the FBI did not seek the warrant is the bar for getting those warrants when it came to those not affiliated with known terrorist groups or known terrorist countries was set too high.

That is why Senator KYL and I introduced this amendment to FISA. We intend to make it easier for law enforcement to get warrants against non-U.S. citizens—this does not affect a single U.S. citizen—who are suspected of preparing to commit acts of terrorism.

As I mentioned, we leave two of the standards in place, the ones that measure the bar. Right now, the FBI is required to show three things before they can get a warrant: They must show the target is engaging in or preparing to engage in international terrorism. We keep that requirement. It does not change. They must show a significant purpose of the surveillance is foreign-intelligence gathering. We are keeping that requirement, too, that foreign-intelligence gathering is a significant purpose.

Here is the problem. They also must show under present law that the target is an agent of a foreign power, such as Iraq, or a known foreign terrorist group, such as Hamas or al-Qaida. That is the hurdle we are removing. If that requirement had not been in place, there is no question the FBI could have gotten a warrant to do electronic surveillance on Zacarias Moussaoui and, who knows, not certainly but perhaps, 9/11 might not have occurred.

That is the anguish we all face. Right now we know there may be terrorists plotting on American soil. We may have all kinds of reasons to believe

they are preparing to commit acts of terrorism. But we cannot do the surveillance we need if we cannot tie them to a foreign power or an international terrorist group. It is a catch-22. We need the surveillance to get the information we need to be able to do the surveillance. It makes no sense. The simple fact is, it should not matter whether we can tie someone to a foreign power. Whether our intelligence is just not good enough or whether the terrorist is acting as a lone wolf or it is a new group of 10 people who have not been affiliated with any known terrorist group, should not affect whether we can do surveillance, should not affect whether they are a danger to the United States, should not affect whether they are preparing to do terrorism. Engaging in international terrorism should be enough for our intelligence experts to start surveillance.

It is important to note if we remove this last requirement now it will immeasurably aid law enforcement without exposing American citizens or those who hold green cards to the slightest additional surveillance. Let me repeat, because I know we get some who write that this is the unraveling of the Constitution and it befuddles me because it is not, it does not affect a single American citizen or those who have green cards.

It is fair. It is reasonable. It is a smart fix to a serious problem. It passed out of the Judiciary Committee with unanimous support. It is supported by the administration as well.

One final word. This is about an amendment from my good friend, a colleague from California, Senator FEINSTEIN, which we will debate. She is introducing an amendment that would allow some gray into the law, rather than making it black or white. Her amendment would leave the decision whether or not to grant the FBI a FISA warrant against a lone wolf, she would leave that up to a particular judge.

I do not believe we can afford any more uncertainty. We saw what uncertainty did when the Zacarias Moussaoui case occurred. The FBI, so worried that they might overstep, said no. We need clarity in the law when it comes to fighting terrorism.

Therefore, I urge my colleagues to oppose the Feinstein amendment and support the bipartisan bill which is before us today.

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

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

The legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I ask unanimous consent that Senator DEWINE be recognized at 1 p.m. for 15 minutes of morning business.

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

Mr. KYL. Mr. President, I ask unanimous consent that in the debate on the pending business involving the Foreign Intelligence Surveillance Act, a letter from the Department of Justice dated July 31, 2002, be printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, July 31, 2002.

Hon. BOB GRAHAM,
Chairman, Select Committee on Intelligence, U.S. Senate, Washington, DC.

Hon. RICHARD C. SHELBY,
Vice-Chairman, Select Committee on Intelligence, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN AND MR. VICE CHAIRMAN: The letter presents the views of the Justice Department on S. 2586, a bill ''[t]o exclude United States persons from the definition of 'foreign power' under the Foreign Intelligence Surveillance Act of 1978 relating to international terrorism.'' The bill would extend the coverage of the Foreign Intelligence Surveillence Act (''FISA'') to individuals who engage in international terrorism or activities in preparation therefor without a showing of membership in or affiliation with an international terrorist group. The bill would limit this type of coverage to non-United States persons. The Department of Justice supports S. 2586.

We note that the proposed title of the bill is potentially misleading. The current title is ''To exclude United States persons from the definition of 'foreign power' under the Foreign Intelligence Surveillance Act of 1978 relating to international terrorism.'' A better title, in keeping with the function of the bill, would be something along the following lines: ''To expand the Foreign Intelligence Surveillance Act of 1978 ('FISA') to reach individuals other than United States persons who engage in international terrorism without affiliation with an international terrorist group.''

Additionally, we understand that a question has risen as to whether S. 2586 would satisfy constitutional requirements. We believe that it would.

FISA allows a specially designated court to issue an order appoving an electronic surveillance or physical search, where a significant purpose of the surveillance or search is ''to obtain foreign intelligence information.'' Id. §§1804(a)(7)(B), 1805(a). Given this purpose, the court makes a determination about probable cause that differs in some respects from the determination ordinarily underlying a search warrant. The court need not find that there is probable cause to believe that the surveillance or search, in fact, will lead to foreign intelligence information, let alone evidence of a crime, and in many instances need not find probable cause to believe that the target has committed a criminal act. The court instead determines, in the cause of electronic surveillance, whether there is probable cause to believe that ''the target of the electronic surveillance is a foreign power or an agent of a foreign power,'' *id* §1805(a)(3)(A), and that each of the places at which the surveillance is directed ''is being used, or about to be used, by a foreign power or an agent of a foreign power,'' *id*. §1805(a)(3)(B). The court makes parallel determinations in the case of a physical search. *Id*. §1824(a)(3)(A). (B).

The terms ''foreign power'' and ''agent of a foreign power'' are defined at some length, *Id*. §1801(a), (b), and specific parts of the definitions are especially applicable to surveillances or searches aimed at collecting intelligence about terrorism. As currently defined, ''foreign power'' includes ''a group engaged in international terrorism or activities in preparation therefor,'' *Id*. §1801(a)(4) (emphasis added), and an ''agent of a foreign power'' includes any person who ''knowingly engages in sabotage or international terrorism or activities that are in preparation therefor, for or on behalf of a foreign power,'' *Id*. §1801(b)(2)(C). ''International terrorism'' is defined to mean activities that: (1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State; (2) appear to be intended—(A) to intimidate or coerce a civilian population; (B) to influence the policy of a government by intimidation or coercion, or (C) to affect the conduct of a government by assassination or kidnapping; and (3) occurs totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce of intimidate, or the locale in which their perpetrators operate or seek asylum.

S. 2586 would expand the definition of ''foreign power'' to reach persons who are involved in activities defined as ''international terrorism,'' even if these persons cannot be shown to be agents of a ''group'' engaged in international terrorism. To achieve this expansion, the bill would add the following italicized words to the current definition of ''foreign power'': ''*any person other than a United States person who is, or* a group *that is*, engaged in international terrorism or activities in preparation therefor.''

The courts repeatedly have upheld the constitutionality, under the Fourth Amendment, of the FISA provisions that permit issuance of an order based on probable cause to believe that the target of a surveillance or search is a foreign power or agent of a foreign power. The question posed by S. 2586 would be whether the reasoning of those cases precludes expansion of the term ''foreign power'' to include individual international terrorists who are unconnected to a terrorist group.

The Second Circuit's decision in *United States* versus *Duggan*, 743 F.2d 59 (2d Cir. 1984), sets out the fullest explanation of the ''governmental concerns'' that had led to the enactment of the procedures in FISA. To identify these concerns, the court first quoted from the Supreme Court's decision in *United States* versus *United States District Court*, 407 U.S. 297, 308 (1972) (''*Keith*''), which addressed ''domestic national security surveillance'' rather than surveillance of foreign powers and their agents, but which specified the particular difficulties in gathering ''security intelligence'' that might justify departures from the usual standards for warrants: ''[Such intelligence gathering] is often long range and involves the interrelation of various sources and types of information. The exact targets of such surveillance may be more difficult to identify than in surveillance operations against many types of crime specified in Title III [dealing with electronic surveillance in ordinary criminal cases]. Often, too, the emphasis of domestic intelligence gathering is on the prevention of unlawful activity or the enhancement of the government's preparedness for some possible future crisis or emergency. Thus the focus of domestic surveillance may be less precise than that directed against more conventional types of crime.'' *Duggan*, 743 F.2d

at 72 (quoting *Keith*, 407 U.S. at 322). The Second Circuit then quoted a portion of the Senate Committee Report on FISA: ''[The] reasonableness [of FISA procedures] depends, in part, upon an assessment of the difficulties of investigating activities planned, directed, and supported from abroad by foreign intelligence services and foreign-based terrorist groups. . . . Other factors include the international responsibilities of the United States, the duties of the Federal Government to the States in matters involving foreign terrorism, and the need to maintain the secrecy of lawful counterintelligence sources and methods.'' Id. at 73 (quoting S. Rep. No. 95–701, at 14–15, reprinted in 1978 U.S.C.C.A.N. 3973, 3983) (''Senate Report''). The court concluded:

Against this background, [FISA] requires that the FISA Judge find probable cause to believe that the target is a foreign power or an agent of a foreign power, and that the place at which the surveillance is to be directed is being used or is about to be used by a foreign power or an agent of a foreign power; and it requires him to find that the application meets the requirements of [FISA]. These requirements make it reasonable to dispense with a requirement that the FISA Judge find probable cause to believe that surveillance will in fact lead to the gathering of foreign intelligence information.

Id. at 73. The court added that, a fortiori, it ''reject[ed] defendants' argument that a FISA order may not be issued consistent with the requirements of the Fourth Amendment unless there is a showing of probable cause to believe the target has committed a crime.'' Id. at n.5. See also, e.g., *United States* versus *Pelton*, 835 F.2d 1067, 1075 (4th Cir. 1987); *United States* versus *Cavanagh*, 807 F.2d 787, 790–91 (9th Cir. 1987) (per then-Circuit Judge Kennedy); *United States* versus *Nicholson*, 955 F. Supp. 588, 590–91 (E.D. Va. 1997).

We can conceive of a possible argument for distinguishing, under the Fourth Amendment, the proposed definition of ''foreign power'' from the definition approved by the courts as the basis for a determination of probable cause under FISA as now written. According to this argument, because the proposed definition would require no tie to a terrorist group, it would improperly allow the use of FISA where an ordinary probable cause determination would be feasible and appropriate—where a court could look at the activities of a single individual without having to access ''the interrelation of various sources and types of information,'' see *Keith*, 407 U.S. at 322, or relationships with foreign-based groups, see *Daggan*, 743 F.2d at 73; where there need be no inexactitude in the target or focus of the surveillance, see *Keigh*, 407 U.S. at 322; and where the international activities of the United States are less likely to be implicated, see *Duggan*, 743 F.2d at 73. However, we believe that this argument would not be well-founded.

The expanded definition still would be limited to collecting foreign intelligence for the ''international responsibilities of the United States, [and] the duties of the Federal Government to the States in matters involving foreign terrorism.'' Id. at 73 (quoting Senate Report at 14). The individuals covered by S. 2586 would not be United States persons, and the ''international terrorism'' in which they would be involved would continue to ''occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.'' 50 U.S.C. §1801(c)(3). These circumstances would implicate the ''difficulties of investigating activities planned, directed, and supported from abroad,'' just as current law implicates such difficulties in the case of foreign intelligence services and foreign-based terrorist groups. *Duggan*, 743 F.2d at 73 (quoting Senate Report at 14). To overcome those difficulties, a foreign intelligence investigation ''often [will be] long range and involve[] the interrelation of various sources and types of information.'' Id. at 72 (quoting *Keith*, 407 U.S. at 322). This information frequently will require special handling, as under the procedures of the FISA court, because of ''the need to maintain the secrecy of lawful counterintelligence sources and methods.'' Id. at 73 (quoting *Keith*, 407 U.S. at 322). Furthermore, because in foreign intelligence investigations under the expanded definition ''[o]ften . . . the emphasis . . . [will be] on the prevention of unlawful activity or the enhancement of the government's preparedness for some possible future crisis or emergency,'' the ''focus of . . . surveillance may be less precise than that directed against more conventional types of crime.'' Id at 73 (quoting *Keith*, 407 U.S. at 322). Therefore, the same interests and considerations that support the constitutionality of FISA as it now stands would provide the constitutional justification for the S. 2586.

Indeed, S. 2586 would add only a modest increment to the existing coverage of the statute. As the House Committee Report on FISA suggested, a ''group'' of terrorists covered by current law might be as small as two or three persons. H.R. Rep. No. 95–1283, at pt. 1, 74 and n.38 (1978). The interests that the courts have found to justify the procedures of FISA are not likely to differ appreciably as between a case involving such a group of two or three persons and a case involving a single terrorist.

The events of the past few months point to one other consideration on which courts have not relied previously in upholding FISA procedures—the extraordinary level of harm that an international terrorist can do to our Nation. The touchstone for the constitutionality of searches under the Fourth Amendment is whether they are ''reasonable.'' As the Supreme Court has discussed in the context of ''special needs cases,'' whether a search is reasonable depends on whether the government's interests outweigh any intrusion into individual privacy interests. In light of the efforts of international terrorists to obtain weapons of mass destruction, it does not seem debatable that we could suffer terrible injury at the hands of a terrorist whose ties to an identified ''group'' remained obscure. Even in the criminal context, the Court has recognized the need for flexibility in cases of terrorism. See *Indianapolis* v. *Edmond*, 531 U.S. 32, 44 (2000) (''the Fourth Amendment would almost certainly permit an appropriately tailored roadblock set up to thwart an imminent terrorist attack''). Congress could legitimately judge that even a single international terrorist, who intends ''to intimidate or coerce a civilian population'' or ''to influence the policy of a government by intimidation or coercion'' or ''to affect the conduct of a government by assassination or kidnapping,'' 50 U.S.C. §1801(c)(2), acts with the power of a full terrorist group or foreign nation and should be treated as a ''foreign power'' subject to the procedures of FISA rather than those applicable to warrants in criminal cases.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

DANIEL J. BRYANT,
Assistant Attorney General.

Mr. KYL. Mr. President, I would like to advise Members that under the unanimous consent agreement for the consideration of this bill there is a period of 2 hours general debate and 4 hours equally divided on the Feinstein amendment. We would like to ask Members who have comments to make about this legislation to come to the floor and express themselves so that we can conclude this bill today under the unanimous consent. I will continue to discuss the bill. But if other Members would like to come, I will yield the floor to them. I would ask that those who have amendments that are authorized by the unanimous consent agreement to lay those amendments down so Members who wish to speak to those amendments could also address that.

In the meantime, let me continue some of the conversation Senator SCHUMER and I had before. We are talking about a bill which would plug a loophole in the existing law—the Foreign Intelligence Surveillance Act—which currently authorizes warrants to be obtained in two specific situations. We make it clear that there is a third situation as well. The two specific situations are where you either have somebody you suspect is involved in international terrorism because they work for a foreign government—that is a situation like the old Soviet spy—or they work for some international terrorist organization. Remember that this law was created at the time when we had organized groups such as the Red Brigade and the Meinhof gang, and those types of groups. That is why those two definitions in the statute were included in the way they were. What was not anticipated is that we would also have people coming from abroad to the United States to commit acts of terrorism against American citizens as part of this rather amorphus Islamic Jihad movement rather than an organization of people affiliated around a culture or an idea or a movement.

As a result, the statute needs to include that third group of people, as we know, after September 11. We have specific cases of people in which warrants were sought but were not obtained because we couldn't make that connection to either a specific country or a very specific terrorist organization. Instead, the individual had relationships with various people and organizations involved in terrorism but certainly we couldn't say he was a card-carrying member in the sense that the statute was originally drafted. So the same requirements, as Senator SCHUMER said, would pertain. It doesn't apply to U.S. citizens. It only applies to foreign terrorism. But it would include a person coming here from another country—not a U.S. citizen—and we have probable cause to believe is engaged in or about to engage in an act of terrorism.

In that case, the law enforcement authorities can go to the court and seek a warrant just as they do in any other criminal court. But the difference here is the Foreign Intelligence Surveillance Act. One of the reasons a special

court is set up for that is because the information which the Justice Department frequently presents is highly classified. Clearly, here you are dealing with foreign threats—either an international spy spying on us from another country or some kind of terrorist like Zacarias Moussaoui, and the information you have that enables the warrant to be sought was obtained obviously through intelligence work. You don't want to compromise either the sources or the methods of intelligence. As a result, you can't just file publicly in the regular court system for a warrant.

That is why the Foreign Intelligence Surveillance Act court was established. These are judges just like any other judge, but they have special intelligence clearances. They have been cleared to handle classified material. By the rules of the court, that material is kept in the court. Once allegations have been filed against people, then the matter can be debated in camera, which is to say in private—not in public hearings. Proceedings remain classified, at least until the matter is included; perhaps thereafter as well.

This is the way in which these highly sensitive intelligence matters are handled. It takes a special procedure and a special court to do that. But there is nothing antithetical to a constitutional right simply because we have to handle it that way.

There are other situations, as well, in which in our court system can handle things nonpublicly. There are sometimes sensitive matters between litigants that have to be handled in camera; that is to say, in effect in the judge's chambers and not out in public. Certainly, I think everybody can recognize that in some of the big spy cases and international terrorism cases you just can't take the evidence you gathered by the intelligence mechanism which we have and produce all of that information in open court. That is why you have these special procedures. But the underlying legal requirements to obtain the warrant remain essentially the same. They are slightly different in the classified court than in a regular court.

In all candor, they are a little bit easier to obtain. But the basic element of probable cause and belief that a crime is being committed or is about to be committed or is planned remains. Nothing is changed.

As Senator SCHUMER pointed out, our legislation doesn't change anything relating to the standard of proof, the burden of proof, or anything of that sort in the existing law that works so well. What we do is ensure that the warrant can be obtained not just against the spy for a specific country, or the terrorist whom you can identify as a member of a particular terrorist organization—sort of an anachronistic concept in today's terrorist situation—but also pertains to the non-U.S. citizen, a foreign person who comes here from abroad with the intent to commit some act of terrorism against U.S. citizens.

When you have those elements, you have the same foreign terrorist nexus to the law that our Constitution permits included within the Foreign Intelligence Surveillance Act for purposes of obtaining warrants or obtaining other surveillance of the individuals. That is all we do. That is all that is done by this legislation.

So those of us—including I think every one of us on the Judiciary Committee—who consider ourselves civil libertarians need not be concerned that this statute or that this legislation, in any way, would impact on our constitutional rights, nor that it would diminish the constitutional rights of non-U.S. persons who are not engaged in terrorism. But if we have probable cause to believe you are engaged in an act of terrorism, then, yes, you would be subject to provisions of this law.

This legislation has an interesting history, as I alluded to earlier, because it was assigned to the Intelligence Committee, and it was almost included as a part of the Intelligence Authorization Act of last year. And the chairman of the Intelligence Committee this year was kind enough to offer to include it in this year's legislation as well.

Since we were able to also have the bill marked up in the Judiciary Committee and brought to the floor as a result of that markup, that was not deemed necessary. That is why the bill is here—actually as a result of action by the Judiciary Committee.

So both the Intelligence Committee and the Judiciary Committee have been involved in this legislation, the former having a hearing and the latter having marked up the bill. Having been a member of the Intelligence Committee and sitting, as I do, on the Judiciary Committee, I can tell you it was also the subject of additional comments and hearings that were held for broader purposes of examining the terrorism issue. That is why I mentioned the fact that the legislation had actually been supported publicly by various Government officials who testified before either the full Judiciary Committee or the subcommittee I chair on terrorism and technology. They had testified before our committee on terrorism issues generally, and I specifically asked whether they supported the legislation in question; the response to the questions, of course, was that they did.

Another interesting hearing, which was a joint hearing, as I recall, between the Judiciary and the Intelligence Committees had testimony from Coleen Rowley, referred to by Senator SCHUMER earlier. You will recall, she was the agent from Indianapolis who was very exercised about the fact that she could not get a warrant against Zacarias Moussaoui and complained bitterly that the FBI headquarters had prevented her from doing that. She thought the conditions warranted the issuance of the warrant.

It is a debatable point. But it would not have been debatable if our proposal had been law. It would have been very clear. We had the probable cause. The only question was, Can we tie this person to some international terrorist organization? As I said before, we spent a lot of time and a lot of effort trying to run around tracing his contacts with Chechen rebels, and at the end of the day it just was not specific enough to be able to use the statute to get the warrant against him.

Right after 9/11, when essentially the same warrant was sent forward, then we had additional information of contacts this individual had, as a result of which the warrant was obtained. But that would not have occurred had September 11 not occurred—or at least it is doubtful it would have occurred. Let me put it that way.

Would that have prevented the September 11 attacks? No one knows for sure. I suspect not, but at least a plausible case can be made that we would have known a lot more about the planning of September 11 had we been able to get into Moussaoui's computers and questioned him and ascertained what he was up to and, furthermore, traced the contacts we were later able to trace from Moussaoui to others involved in the al-Qaida movement that would have painted a much clearer picture of what was being planned prior to September 11 than the information that we had.

The point is, we do not want to be in that position again. So whether it would have prevented 9/11 is really beside the point. We had the ability to get information which can protect the American people against acts of international terrorism. Why wouldn't we want to take advantage of that opportunity?

As I said, the Judiciary Committee unanimously voted this bill out of committee to send it to the floor so we could deal with that precise issue. I am certain my colleagues will agree that this is important to do and that we will do it a little bit later on this day. When we do, I think we can be very proud of the fact that this is another in a series of things we will have done to help prepare our country against the international terrorist threat.

We know that in the whole matter of homeland security you can only provide so much defense, that it really is about taking the fight to the enemy. Because our country is so big, it is so open, we have such broad freedoms in this country—and thankfully so—it is virtually impossible to absolutely protect us from a terrorist who would come here to do us harm. One of the ways we can help to protect against that is by getting good intelligence on people who come here from abroad and who we find out mean us ill. This provision today is a way to help us do that.

So this is a tool in the war on terror that will really help us ensure that we deal with as many of these threats as we possibly can. Are we always going to find out enough to even get a warrant? Not necessarily so. That is why

the efforts of the administration to go after these terrorists all around the world are so important.

But what has helped us in that regard is that we have had cooperation from other governments. And as much as we have been critical of some of our allies for not supporting us as we would like to have had them do—such as the situation in Iraq—I will tell you, virtually every country in the world has been supportive in one way or another in supplying us with information about terrorists in their countries or terrorists of whom they are aware who might be affiliated in some way in this international movement that threatens us all.

One of the things we discovered, however, in talking to legislators and parliamentarians from these other countries, and intelligence officials, and law enforcement officials, is that they have legal inhibitions just like the United States does. Their laws only permit them to go so far in tracking down these terrorists in their country.

In the case of Germany, for example, which has been very helpful to the United States, they were able to change one of their laws to make it easier for them to go after these terrorists. There was another law they also needed to change, and at last count I do not recall whether they were able to get that done.

But the point is, if we are able to change our law, as we did with the Border Security Act and the USA Patriot Act, we can demonstrate a seriousness of purpose to these other countries to convince them that all of us need to make these kinds of changes in our laws so that we can go after these terrorists.

The analogy is, we won the war in Iraq in a most amazing way. We sent our troops with the best equipment and the best training ever in the history of the world. And I wish I could share some of that, the information about that equipment publicly. But I think we have all, through the embedded reporters, come to appreciate how just one American soldier, with all of the technology at his disposal, can make a tremendous difference.

We also have helped protect them. They have special flak vests, bullet-proof vests that protect them against a lot of incoming. We try to protect them with the special chemical gear in the event of a chemical attack, and so on.

We want to send our troops into battle protected in the very best way and with the very best means of accomplishing their mission. Why would we deny our law enforcement and intelligence officials the very same kinds of weapons in the battle that we send them out to win?

I guarantee you that the next time there is a case like Zacarias Moussaoui or some other terrorist about whom we have some information but we don't go after strongly enough, and he does something to us, the recrimination will be great. Oh, the accusations will fly: Why didn't we do something about that when we could have?

So our response today is going to be: We did. We came together as a Senate and we enacted another law, another piece—it is a small piece, but it is an important piece—to help us fight this war on terror. We did not shirk our responsibility. When we became aware of the loophole in the law, we acted to fill it.

Now, we have to do that in order to be able to take this credit, obviously, but I believe strongly that the House of Representatives will act similarly and that we will be able to get this to the President's desk in very short order, so at the end of the day today we can say we have done something very important to advance our ability to fight the war on terror and protect the American people.

Again, I urge my colleagues, if there is no opposition—and I hope there isn't—that is fine. But anybody, either in opposition or in favor of the legislation, come forward so that we can have whatever debate is necessary. And I especially ask the proponents of amendments to come forward so that we can begin to debate them.

I will take this moment to press some of the comments that will be made about the two amendments.

Senator FEINGOLD has proposed an amendment that we will accept and the Senate should accept which requires that the warrants obtained under this law generally—not just the provision we are talking about today, but if we obtain a warrant under either of the other provisions as well, that the information be compiled and shared with the Senate; specifically, that the information be sent to the Intelligence Committee—it is classified information, obviously—and that the cleared people on the Judiciary Committee who are appropriate to view the information have full access to that so we can evaluate whether these provisions are being used, abused, how often they are being used, how effectively, and so on. I believe his amendment calls for an annual report which we could examine. That is very useful information for us to have.

One thing we found was that prior to 9/11, this statute had not been used very often. It is not a particularly easy statute with which to comply. You do really have to have your information together before you seek the warrant because you don't ever want to be turned down. I don't believe the Justice Department ever was turned down. That is evidence of the fact that they were careful. Since 9/11, there have been a lot more cases in which this has been used. That information will be available to us, and therefore I will support Senator FEINGOLD in offering the amendment.

The other amendment that is in order under the unanimous consent agreement, with all due respect to my great friend and colleague Senator FEINSTEIN, would gut the bill and would be bad. It would really undermine the whole FISA process. We should reject it. I know she offers this amendment not for that purpose. Of all the people in the Senate with whom I have worked who share my strong conviction that we need to do everything we can to support our intelligence and law enforcement communities, Senator FEINSTEIN is equaled by none. She is the ranking member of the Terrorism Subcommittee, and she and I have cosponsored numerous bills or amendments designed to enhance law enforcement and intelligence capabilities. She is a very strong advocate of giving our intelligence and law enforcement communities the very best tools possible.

She just has a different point of view about how this FISA warrant process should work. I will let her describe it. I will offer my view that it has no place in the FISA situation. What her amendment purports to do really might have some applicability in a court setting because it talks about a presumption. As lawyers know, presumptions arise when you have two parties to litigation and one party comes forward with a particular piece of evidence or allegation which then changes the burden of going forward with the evidence or the burden of proof in the case. A presumption is established, and then the other side has to overcome it. That has no place in an ex parte hearing where the Government is seeking a warrant against a party who is not even aware that the warrant is being sought. Obviously, you don't get a search warrant by notifying him that you are about to do that.

What her amendment pertains to does not really have application to the situation presented in an application for a FISA warrant and would seriously undermine the Government's ability to obtain it. You could either read it one of two ways. Either it would be totally meaningless—and I know that that is not intended—or else it would be very pernicious because it would create the suggestion in court that the material presented to it is not, is no more than a presumption, that it is not to be accepted on its face.

Specifically, the Government would be asserting that the person against whom the warrant is sought is a non-U.S. citizen, a foreign person under the definition of the statute. If that information is presented in sufficient form for a court to issue the warrant, it makes no sense at all to have the information merely a presumption that the individual is a foreign person. How does that advance the ball? How does it help the court? How does it protect anybody? The court is still going to have to answer the very same question: Do I believe the information the Government is presenting to me that this is a non-U.S. citizen? Either he is or he isn't. It is not a matter of a presumption.

If the court is not convinced that the Government's information is correct,

then the court is not going to issue the warrant. It would be improper to do so. If the court is convinced that the person is a non-U.S. citizen, then the court can issue the warrant if the other requirements are met. I don't believe Senator FEINSTEIN attacks the other requirements.

Either you are a foreign-born person, or a non-U.S. person, or you are not. The court has to make that decision. And creating a presumption about it is really irrelevant to this particular process. If it is more than irrelevant, there is some kind of a problem. Obviously, you don't want the court to have to somehow independently verify the information that is presented to it by the Justice Department. That is not a part of; that is not the way the court works. The court does not do this sua sponte, or on its own. The court has the information before it, and it either has to accept the information or not. It doesn't have to accept the Justice Department's word for it. The Justice Department cannot simply make the assertion. It has to offer the proof. If the proof is not satisfactory, the warrant will not issue. Later, if it is found that the evidence was not satisfactory, then there is always some question about whether the evidence obtained, of course, could be used, say, in a later prosecution.

The bottom line is that that amendment does not help. It could seriously hurt the application of the entire FISA statute. It is not just limited to the amendment we are offering today. I urge my colleagues, when the time comes, to reject the Feinstein amendment, not because it is not well intended—I am confident that it is—but, rather, that its effects are ill understood at best and, at worst, would be pernicious to the application of the statute.

I have said all I need to say at this point on the legislation. I would note that time will run against the time allotted under the bill. Since both Senator SCHUMER and I control the time, anyone who wishes to come to speak to the legislation either for or against, I ask unanimous consent that if neither Senator SCHUMER nor I are here, they should be permitted to do so without specific acquiescence by Senator SCHUMER or myself.

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

Mr. KYL. Unless there is someone else who wishes to speak at this time, I ask unanimous consent that the time consumed in the quorum call be equally divided.

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

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

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

ORDER OF PROCEDURE

Mr. REID. Mr. President, shortly the distinguished Senator from Ohio is going to speak for 15 minutes as in morning business. I ask unanimous consent that the time, even though in morning business, be charged against the underlying bill.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant 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.

Mr. DEWINE. Mr. President, I ask unanimous consent that at 1:25 p.m. today there be 20 minutes for debate equally divided between the chairman and ranking member of the Judiciary Committee prior to the cloture vote at 1:45 p.m.

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

Mr. DEWINE. Mr. President, today—on the 58th Anniversary of the unconditional surrender of Germany and the end of World War II in Europe—a flag will be flown over this Capitol building here in Washington, DC, to honor the men who served in Company K, the most decorated company in the 409th Regiment of the 103rd Infantry Division, 6th Corps of the 7th Army. The members of the Company will display this flag at their reunion later this year in Green Bay, Wisconsin, and at all future reunions, in memory of the men from K Company who fell on the field of battle, the men who did not return home.

Though it has been 58 years nearly 6 decades, since these men served and fought and lived and died together, the men of K Company, now in their late 70s and 80s, continue to remember and honor their brothers who died in battle.

The members of K Company—the men who did return home—the men who were able to lead their lives and have families and grow old and spend time with their children and grandchildren and now even great-grandchildren—these men have great reverence for those who died. As Bill Gleason, who was a Private in Company K, so eloquently once wrote in the Southtown Economist in May 1988:

> Some in our Company were denied the chance to reach old age. They didn't make it to adulthood. They never were old enough to vote in an election. They died then—there in France or Germany. . . . They are frozen in time as they were—forever youthful.

I would like to take a moment to read the names of those men of K Company, the men who perished during battle, the men who remain, as Mr. Gleason so fittingly wrote, forever youthful: Wilson F. Rogers from Tacoma, WA.; James Rosenbarger from Corydon, IN; Rosco Fry from Spickard, MO; Stanley Berdinski from Muskegon, MI; Bruno Pashisky from Chicago, IL; Sherman Sprague from Clinton, IA; Alex Hurtiz from El Paso, TX; Charles Frakes from Kokomo, IN; Abe Umansky from San Diego, CA; Edwin Byron from Akron, OH; and Albert Strang.

K Company was no ordinary company. It was recognized as the Most Decorated Company in the 409th Regiment. The soldiers of K Company fought valiantly in France, Germany, and Austria. They saw combat in the Rhineland from September 15, 1944 to March 12, 1945 and in Central Europe from March 22, 1945 to May 11, 1945.

Two books have been written about the Company—one by Bill Gleason, called Task Force Kommando: Camp Howze, Texas to Jenbach Austria; and A Combat Infantryman in World War II, by Otis Cannon, who also served in the Company. Both books provide an excellent perspective of an Infantry company in combat during World War II. They describe the reality of the War that these brave, young Infantrymen on the frontlines faced. They paint us a picture of what life was really like for these men—how they struggled and endured fierce fighting, rugged terrain, and miserable conditions until they helped secure the ultimate victory 58 years ago today.

I had the opportunity to read both of these books this past weekend. Both of them provide insightful understanding of what life was like for these men during that period of time.

The one book, ''Task Force Kommando,'' by Private Gleason, was written shortly after the end of World War II. Both books were written by the men who engaged in the combat. It goes almost in a day-by-day chronicle describing that combat. It gives us an understanding of what the combat was like.

K Company's commander was Captain Joseph Bell, who hailed from Topeka, KS. By all accounts, Captain Bell was a man among men. He was fearless. He was a brilliant tactician. And, he was respected and admired by those who served under him.

I was quite taken by a description of Captain Bell that I read from a recent e-mail exchange between two former K Company soldiers. In this e-mail, one of the men recalled his first impressions of Captain Bell and how this man and how this Company have had a lasting impact on his life. I think that this depiction captures a very colorful image of Captain Bell and how he was looked up to and admired by his men. I'd like to take a few moments to read from that e-mail. It begins as a young, World War II Army Private, who has recently arrived in Europe, awaits his company assignment:

> We were told that the next morning, we would be assigned to some infantry company. That night, we went into a bar and

were bought some beer by some GI's who knew we were (for want of a better word) very uptight. All they talked about was Captain Bell and his K Company. They told us that if we wanted to do a lot of fighting that would be the company to be assigned to. That was really not what [my buddy, Ernie Dessecker] and I had in mind!

A little before dark, someone on the other side of the room yelled that Captain Bell was walking down the street and every single soldier in that bar got up and crammed the windows to get a look at him. He had a couple of other officers on both sides of him, but he was walking a step or two ahead. It was a dirt muddy street, but he looked like he was walking on a parade ground. After he went by, you could hear Captain Bell stories all over the bar.

The next day, we were loaded on a truck and at each town, it would stop and some names were called to get off. When Dess and I were told to get off, the first thing we asked was, ''What company is this?'' When told it was Company K, we both wished we could climb back on that truck and head for the rear echelon! Of course, in a very short time, we were so very proud to be part of Captain Bell's Company K, and that pride continues to this day.

I was assigned to John Miller's squad in the second platoon with Sergeant Hart and Lieutenant Monk as platoon leaders. They were very kind and excellent leaders. I learned a lot from them that has stayed with me all these years.

Mr. President, leaders like Captain Bell and John Miller and Sergeant Hart and Lieutenant Monk were tough soldiers, but they had to be, and all the men who served under them came to understand that.

As Bill Gleason wrote about Captain Bell:

> We understood . . . that if we made it through the war, we would owe our lives to him. And, we do. . . . [H]e kept us alive simply because he insisted we stay alive.

Leaders, like Captain Bell, made all the difference.

As Memorial Day approaches, I ask my colleagues to think about Captain Bell and the men of K Company. I ask my colleagues to think about and remember all the men and women who served our Nation during World War II—and to think about and remember all the men and women who have defended our Nation since that time. Memorial Day is a time to honor and remember these individuals. They fought, and therefore all of us now know peace and freedom—our children and our grandchildren know peace and freedom. We owe them our respect and, we give them our thanks.

I am grateful for the men of Company K.

I am grateful that they fought so that I can be here today in a free country—that I can stand here today on the Floor of the United States Senate in the world's greatest Democracy.

And, I am grateful that we can continue to enjoy Life, Liberty, and the Pursuit of Happiness because of their efforts nearly 60 years ago.

I thank them.

I thank all the men of K Company and especially one man who served in the Company—the author of the e-mail I quoted just a moment ago—a Private named Richard DeWine. To him, I will simply say:

Thanks, Dad.

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

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

The legislative clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

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

NOMINATION OF PRISCILLA RICHMAN OWEN, OF TEXAS, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT—Resumed

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. There will be a cloture vote on the Estrada nomination at 1:45.

Mr. LEAHY. I thank the distinguished occupant of the Chair.

Mr. President, it is unfortunate, I believe—and I say this as one who has been here with six different Presidential administrations of both parties—that rather than work with the Senate and Senators from both parties to identify consensus nominees who would get the overwhelming bipartisan support of the Senate for prompt confirmation, the administration seems to insist only on partisanship and strong-arm tactics.

Rather than ideological court packing and political intimidation on which the other side is insistent, I continue to urge the administration to work with us to take the appointment of Federal judges out of politics. If we do that, we can ensure the independence and fairness of the Federal judiciary.

Everybody, whether they are Republican or Democrat, has a stake in having an independent Federal judiciary. None of us want this country—which is rightly praised for having the most independent Federal judiciary in the world—none of us want to see it become a partisan judiciary.

Now, today we are going to be asked to vote on two cloture motions—one on the Estrada nomination and one on the Owen nomination. I think the last time the Senate was called upon to vote on two cloture motions for nominations on the same day was when Republicans were filibustering the nominations of Richard Paez and Marsha Berzon in the year 2000. Three years ago, numerous Republicans voted against cloture on those nominees, even though Judge Paez had been pending for more than 4 years.

I worry that the Republicans spend all this time talking about how we are blocking judges. As a matter of fact, we are not. Out of 125 judicial nominees the Senate has considered, we have confirmed 123 of them. We have held up two. Two out of 125 is not bad. In fact, President Clinton would have loved to have had that kind of a record when he was President, but the Republicans stopped more than 50 of his judges—not merely two as we are asking to be reconsidered. They blocked 50.

Under Republican control, there were not a whole lot of votes on the floor. Basically, they had a routine that if one Republican Senator objected, then the nominee never got a hearing and never got a vote. The Republicans never faced having to debate the nominees on the floor. The nominees were just never given a hearing in committee. They were never given a vote on the floor.

We had several Senators, many serving now, who just refused to return their blue slips. In fact, we had a definite rule by the chairman of the Judiciary Committee at the time that said that if you had a Senator, for example, from the home State who objected, that person would not go forward.

We had this once where the Senator from North Carolina objected to a circuit court judge, so, of course, we never had a hearing or a vote on that nominee. The Senator from Texas objected to several courts of appeals nominees. Distinguished Hispanic nominees were never given a hearing and never given a vote, because, as the chairman said, if both Senators from the State objected, of course, you could not go forward.

I know the Republicans now intend to go forward with at least one judge where both Senators from that State object—apparently it makes a difference who is President. When they blocked 50 or 60, some by a one-person objection, that was considered following the constitutional responsibility of advice and consent. When we ask to hold up two of the most controversial, divisive nominees—2 out of 125 nominations—we are suddenly obstructionists. But 50 or 60 on the other side is ''good government.''

Now, a lot of us have worked hard to repair the damage done during that time, from 1995 through the early part of 2001. But again, I find, unlike the other administrations I have served with here—President Ford, President Carter, President Reagan, former President Bush, President Clinton; all Presidents who would work with Senators of both parties to try to get a consensus on their nominees—this White House shows no interest in that.

There has been little acknowledgment of our efforts. The current administration continues down the strident path of confrontation and court packing rather than working with Senators. Well, court packing and politicizing of

the Federal judiciary should never be allowed under any President.

One of my heroes is Franklin Roosevelt. When Franklin Roosevelt tried to pack the courts, tried to politicize the appellate courts, the Senate stopped him. And the Senate should always do that—no matter who the President is.

I am not concerned that the President nominates conservative Republicans—and I voted for hundreds of them over the years—but I am not going to vote for somebody who seems to be nominated solely for the purpose of politicizing the Federal bench.

When I was chairman of the committee, we worked hard to hold hearings and confirm nominees, in order to lower the number of vacancies—which had increased because of the refusal of Republicans to allow many nominations to go forward during the Clinton years. We had a very high number of vacancies. After I became chairman, we cut that number of vacancies virtually in half. Now the vacancy rate is down to about 5½ percent.

Now, people seem to talk about two judges not going forward, two judges for well-paid lifetime jobs. I wish, having gotten the judiciary vacancy rate down to 5½ percent, we would look at the fact that the Nation's unemployment rate is 6 percent. The number of private-sector jobs lost since the beginning of the Bush administration is 2.7 million. Almost 9 million Americans are now out of work. Unemployment has risen by more than 45 percent.

The Democrats in the Senate have moved forward to confirm 123 of this President's judicial nominees. But the Republican-led Senate seems obsessed with trying to force through the most divisive of this President's controversial, ideologically chosen nominees.

During the Clinton administration, President Clinton's administration added a million people—a million new jobs—every year. We are losing well over a million jobs a year since this administration came in.

I would suggest that if they really want to find some way to fix the unemployment, don't talk about two people getting extremely high-paying lifetime jobs, talk about the 9 million or so out of work.

What bothers me in the Estrada matter, is that the administration and the Republican leadership have shown no willingness to be reasonable to accommodate the Democratic Senators' request for additional information as shared with the Senate by past administrations. We have endured numerous cloture votes as an indication of Republican intransigence in this matter. It is nothing more.

What bothers me, again, is that there has been no effort—no effort made, as there always has been in past administrations—to work through these matters. It just does not happen.

I mention this more in sadness than anything else. But it is almost as though this administration plays by different rules than any other.

I suggest to the administration, they were not given a mandate to politicize our Federal judiciary.

They were not given a mandate for court packing. They were not given a mandate to take the independent Federal judiciary and turn it into a very narrow branch of the narrowest part of the Republican Party. Nobody is given such a mandate. Just as Franklin Roosevelt found when he wanted to pack the courts from the liberal side and the Senate said no, by the same token, President Bush has to be told no now that he wants to pack the courts on the other side. We do not want a political bench. Anyone ought to be able to come into a court and say, it makes no difference whether I am Republican, Democrat, rich, poor, White, Black, Independent, no matter what my background, I will be treated fairly by that judge.

This is the standard I have always held for the judiciary and for each judge—fairness. I voted for hundreds of Republicans. I voted for them in every single State of the Nation. But I am not going to vote for people who seem to be sent there simply to politicize and polarize the Federal courts.

When I was chairman, I moved faster on nominations of President Bush than the Republican Party ever did on nominations of President Clinton. I stopped the anonymous holds. Dozens upon dozens of President Clinton's nominations were held up by a single Republican putting an anonymous hold. I did away with that when I was chairman. We brought people up, we had hearings, and we voted. As I said before, it is, of course, a fact that we have confirmed 123 of the President's nominees.

We hear all of a sudden that this is so unprecedented. Yes, it is unprecedented. We have held up two. They held up 60. Maybe it is unprecedented that we did not do the same thing.

I believe filibusters should be rare. I said on the floor that I was opposed to them but that statement has now been taken out of context by some on the other side of the aisle. If you read the whole quote, you will see that I was referring to a filibuster by anonymous hold, something I did stop when I became chairman. But the administration holds the key to the Estrada nomination. If they want to make it go forward, we could.

Today the Republican leadership is insisting on two more cloture votes on the Estrada and Owen nominations. These will be the sixth vote on a cloture petition on the Estrada nomination and the second on the Owen nomination. The last time the Senate was called upon to vote on two clotures for nominations that I can recall is when Republicans were filibustering the nominations of Richard Paez and Marsha Berzon in 2000. Three years ago today, on March 8, 2000, numerous Republicans voted against cloture on those nominees, respectively, even though Judge Paez' nomination had been pending for more than four years at that point. Those Republican Senators included nine who are still serving today, including majority leader BILL FRIST and Senators ALLARD, BROWNBACK, BUNNING, CRAIG, DEWINE, ENZI, INHOFE, and SHELBY, as well as Senators GRAMM, HELMS, HUTCHINSON, MURKOWSKI, and SMITH, who led the filibuster of these two nominees. In fact, after Republicans failed to keep cloture from being invoked, Senator SESSIONS moved to indefinitely postpone the Paez nominations, and 31 Republicans voted in favor of that motion to stop a vote on Paez's nomination to the Ninth Circuit. Those Republican Senators included 22 who still serve in the Senate, including majority leader FRIST as well as Senators ALLARD, BOND, BROWNBACK, BURNS, COCHRAN, CRAIG, CRAPO, DEWINE, FITZGERALD, GRASSLEY, GREGG, INHOFE, KYL, LOTT, MCCONNELL, NICKLES, SANTORUM, SESSIONS, SHELBY, THOMAS, and WARNER.

Since July 2001, a number of us have worked very hard to repair the damage done during the years 1995 through the early part of 2001. We have made significant progress. Unfortunately our efforts have received little acknowledgment and the current administration continues down the strident path of confrontation and court packing rather than working with Senators of both parties to identify and nominate consensus, mainstream nominees.

While the Nation's unemployment rate rose last month to 6 percent. The vacancy rate on the Federal judiciary has been lowered to 5.45 percent. While the number of private sector jobs lost since the beginning of the Bush administration is 2.7 million, almost 9 million Americans are now out of work, and unemployment has risen by more than 45 percent, Democrats in the Senate have moved forward to confirm 123 of this President's judicial nominees, reduced judicial vacancies to the lowest level in two decades, by almost 60 percent. Yet the Republican-led Senate remains obsessed with seeking to force through the most divisive of this President's controversial, ideologically-chosen nominees.

The President promised to be a uniter not a divider, but he has continued to send us judicial nominees that divide our Nation and, in the case of Miguel Estrada, he has even managed to divide Hispanics across the country. The nomination and confirmation process begins with the President, and I urge him to work with us to find a way forward to unite, instead of divide, the nation on these issues.

Republican talking points will likely focus on the impasse on two of the most extreme of the President's nominations rather than the 123 confirmations and the lowest judicial vacancy rate in 13 years. They will ignore their own recent filibusters against President Clinton's executive and judicial nominees in so doing.

What is unprecedented about the Estrada matter is that the administration and Republican leadership have

shown no willingness to be reasonable and accommodate Democratic Senators' request for information traditionally shared with the Senate by past administrations. That we have endured numerous cloture votes is an indictment of Republican intransigence on this matter, nothing more. What is unprecedented is that there has been no effort on the Republican side to work this matter out, as these matters have always been worked out in the past. What is unprecedented is the Republican insistence to schedule cloture vote after cloture vote without first resolving the underlying problem caused by the administration's inflexibility.

What is unprecedented about the Owen nomination is that it was made at all. Judge Owen had a fair hearing and was given fair and extensive consideration before the Judiciary Committee last year. We proceeded is spite of the fact that the Republican majority had refused to proceed with any of President Clinton's Fifth Circuit nominees during his last four-year term. Never before in our history has a President renominated for the same vacancy someone voted down by the Judiciary Committee, but that is what this President proceeded to do with this divisive and controversial nominee.

Senator HATCH used to say, when President Clinton was nominating moderates to more than 100 vacancies on our Federal courts, that there was no vacancy crisis. He used to say that he considered 67 vacancies to be ''full employment'' on the Federal judiciary. Today we are well short of 100 vacancies and well beyond what he used to term ''full employment'' with 47 vacancies. The committee continues to report nominations to fill additional vacancies, as well.

From 1995 through the summer of 2001, the Republican majority averaged only 38 confirmations a year with only seven to the Courts of Appeals. That explains why Federal judicial vacancies rose from 63 to 110 on the Republican watch and circuit vacancies more than doubled from 16 to 33. Of course, during those years there were no Republican-led hearings calling for prompt action or fair consideration of President Clinton's moderate judicial nominees. To the contrary, Senator Ashcroft held hearings designed to justify the slowdown. Senator Ashcroft and others perfected the practice of using anonymous holds both in committee and on the floor so that judicial nominees were stalled for months and years without consideration. Scores of nominees never received hearings, at least 10 who received hearings never received committee consideration and those who were ultimately considered often were delayed months and years through holds and filibusters.

Beginning in July 2001, Democrats started bringing accountability and openness to the process. In the 17 months of the Democratic Senate majority we held more hearings on more judicial nominees, more committee votes and more Senate votes than before. We were able virtually to double the pace and productivity of the process. We did away with the secrecy of the ''blue slip'' and the anonymous hold. We considered President Bush's nominees fairly, responsibly and in those 17 months confirmed 100 of this President's nominees. We reversed the destructive trends with respect to the numbers of vacancies and length of time that nominees had to wait to be considered. While we could not consider all nominations simultaneously, we considered more, more quickly than in the preceding years. The Democratic majority inherited 110 judicial vacancies including a record 33 to the circuit courts. By December 2002, we were able, through hard work to outpace the 40 additional vacancies that had arisen and reduce the remaining vacancies to 60, including 25 to the circuit courts. We have continued to cooperate and today the remaining vacancies number 47, including 20 on the circuit courts. This is the lowest vacancy number and lowest vacancy rate in 13 years.

This is not to say that our work is done. Last week, with the help and hard work of the Senate leadership we were able to make additional progress. Last Wednesday, majority leader FRIST used the word ''progress'' to describe how we have been able to resolve complications caused by the manner in which nominations were forced through the Judiciary Committee early this year. Last Thursday, I thanked the majority leader and the Democratic leader and others for their efforts in this regard and for working with us to bring the nomination of Judge Edward Prado to a vote without further, unnecessary delay.

This Tuesday the Senate debated and voted on the nomination of Deborah Cook to the Sixth Circuit. She is the fourth nominee of President Bush to be confirmed to the Sixth Circuit in less than two years. During the entire second term of President Clinton, the Republican majority would not hold hearings or consider a single one of President Clinton's nominees to the Sixth Circuit—not Judge Helene White, not Kathleen McCree Lewis, not Professor Kent Markus. Nonetheless, while I was chair of the Judiciary Committee we proceeded to consider and confirm two conservative nominees of President Bush to the Sixth Circuit and this year the Senate has proceeded to confirm two more.

The work of the Senate would be more productive if this administration were more interested in filling vacancies with qualified, consensus nominees rather than packing the Federal courts with activist judges. The nominations and confirmation process begins with the President. Far from being someone who has sought consensus and unity on judicial nominees, this President has used judicial nominees as a partisan weapon and sought sharply to tilt the courts ideologically. That is unfortunate. Some of us have urged another course, a course of cooperation and conciliation, but that is not the path this administration has chosen. Yet, in spite of the historically low level of cooperation from the White House, the Senate has already confirmed 123 of President Bush's judicial nominees, including some of the most divisive and controversial sent by any President.

Last week the Senate proceeded to a vote on the nomination of Jeffrey Sutton to the Sixth Circuit. He received the fewest number of favorable votes of any nominee in almost 20 years with 52. He is the third controversial judicial nominee of this President against whom more than 40 negative votes were cast, yet those three nominees were not stalled and not subjected to a filibuster.

In just the last 2 years, 123 of the President's judicial nominees have been confirmed. One hundred of those confirmations came during the 17 months of Democratic leadership of the Senate. No fair-minded observer could term that obstructionism. By contrast, during the 6½ years during which Republicans controlled the Senate and President Clinton's nominations were being considered, they averaged only 38 confirmations a year. During the last 2 years of the Clinton administration, the Senate confirmed only 73 Federal judges. Combining the 1996 and 1997 sessions, Republicans in the Senate allowed only 53 judges to be confirmed in 2 years, including only 7 new judges to the circuit courts. One entire congressional session, the Republican-led Senate confirmed only 17 judges all year and none at all to the circuit courts. The Senate confirmed 72 judges nominated by President Bush last year alone under Democratic leadership.

By Republican standards, the 123 judges confirmed so far is more than they averaged for President Clinton over 3 years. If the Senate shut down today and did not consider another judicial nominee we would have already exceeded the total needed to best Republican efforts over an entire 3-year period. At the present rate, President Bush would not just exceed the number of judges appointed by prior presidents, he would shatter all appointment records.

This year, in spite of the lack of cooperation by the administration and the overbearing exercise of power by the majority, we have cooperated with committee action on 26 judicial nominees during the first 3 months of this year. We have proceeded in the Senate to vote on the confirmations of 23 judicial nominees this year, including four extremely controversial nominees to the circuit courts, which makes 123 of this President's judges confirmed overall. That compares most favorably to how Republicans treated President Clinton's nominees. In the 1996 session, for example, the Senate did not confirm a single circuit judge all year and confirmed only 17 judges that entire year. In 1999, the third year of that

Presidential term, and in 1997, the Senate did not reach the level we have already attained until October. We are well ahead of the pace in every year in which Republicans were obstructing consideration of President Clinton's nominees.

A good way to see how much faster this chairman is processing nominations for a Republican President is to compare this year's pace to a comparable year in the last Democratic administration. In 1997, when Bill Clinton was President, the Republican-controlled Judiciary Committee was just holding its second judicial nominations hearing of the year—compared to the ninth hearing that we held this week and was considering its first two circuit court nominees of the year—rather than its tenth. This chairman has moved five times more quickly for President Bush's circuit court nominees than for President Clinton's, and vacancies in the courts are nearly half of what they were in 1997. Even more noteworthy, by this point in 1999, the third year of the last presidential term, the committee had not held or scheduled a single judicial nominations hearing. In fact, no hearing for a judicial nominee was held until June of that year.

The fact is that when Democrats became the Senate majority in the summer of 2001, we inherited 110 judicial vacancies. Over the next 17 months, despite constant criticism from the administration, the Senate proceeded to confirm 100 of President Bush's nominees, including several who were divisive and controversial, several who had mixed peer review ratings from the ABA and at least one who had been rated not qualified. Despite the additional 40 vacancies that arose, we reduced judicial vacancies to 60, a level below that termed ''full employment'' on the Federal judiciary by Senator HATCH.

During the 17 months I chaired the Judiciary Committee, I worked hard to ensure that women and minorities were considered for the federal bench, and I am proud of that record. Many Hispanics and women nominated by President Clinton were blocked or delayed by the Republican majority, and I did not want to see that repeated.

Fine nominees such as Christine Arguello, Jorge Rangel, Enrique Moreno and Ricardo Morado and dozens of other Clinton nominees were never allowed hearings by Republicans, and others, such as Bonnie Campbell and Anabelle Rodriguez, received hearings but no votes in Committee. Others, including Judge Richard Paez, Judge Hilda Tagle, Judge Sonia Sotomayor, and Judge Rosemary Barkett, and dozens of other Clinton nominees were stalled for no good reason. Many of Clinton's nominees were not confirmed the first Congress they were nominated, including Judge Paez, who waited 1,520 days to be confirmed, as well as Judge Tagle, who waited 943 days to be confirmed. Cloture was also sought to bring the nominations of Judge Paez and Judge Barkett and others to vote, although scores of others were never allowed hearings due to secret Republican holds.

I am proud that did not happen on my watch. I am glad to say that we quickly considered and confirmed nominees such as Christina Armijo to the District Court in New Mexico, Philip Martinez and Randy Crane to the District Courts in Texas, Jose Martinez to the District Court in Florida, Alia Ludlum to the District Court in Texas, and Jose Linares to the District Court in New Jersey. In addition, this year we have pressed for expedited consideration of Judge Prado of Texas to the Fifth Circuit, as well as Judge Otero of California and Judge Altonaga of Florida to the Federal district courts. This week the Committee included Judge Consuelo Callahan of California in a hearing and I expect her nomination to the Ninth Circuit to be confirmed promptly with strong Democratic support, as well.

The Senate has this week reduced the number of Federal judicial vacancies to the lowest level it has been in 13 years. The 110 vacancies I inherited in the summer of 2001, vacancies that rose by 65 percent under Senate Republican control, have been more than cut in half. In the 17 months I chaired the Judiciary Committee we not only kept up with extraordinary attrition in the form of an additional 40 vacancies, but reduced all those vacancies from the 160 there would have been had we done nothing, down to 60 by last December. Senator HATCH used to argue when President Clinton was in office that 67 vacancies on the Federal courts amounted to ''full employment''. We reached Senator HATCH's standard for a full Federal bench during the 17 months in which the Democrats led the Senate.

We have continued our efforts this year and this week we reached the lowest level of judicial vacancies in 13 years—the lowest level since judgeships were significantly expanded in 1990. We now are working to reduce the remaining 47 vacancies even further.

Since the beginning of this year, in spite of the fixation of the Republican majority on the President's most controversial nominations, we have worked hard to reduce judicial vacancies even further. As of today, the number of judicial vacancies is at 47. That is the lowest it has been in two decades. That is lower than it ever was allowed to go at any time during the entire eight years of the Clinton administration. We have reduced the vacancy rate from 12.8 percent to 5.45 percent, the lowest it has been since 1990. With some cooperation from the administration think of the additional progress we could be making.

Our Senate leadership, both Republican and Democratic, have worked to correct some of the problems that arose from some of the earlier hearings and actions of the Judiciary Committee this year. Last week we were able to hold a hearing on the nomination of John Roberts to the District of Columbia Circuit. We are all working hard to complete Committee consideration of that nomination at the earliest opportunity. Thus, a number of additional, controversial nominations are in the process of being considered and will be considered by the Senate in due course.

My point is to underscore that we have made and are making real progress from the thoroughgoing obstruction from 1996 until 2001. While ''the glass is not full,'' it is more full than empty and more has been achieved than some want to acknowledge. One hundred and twenty-three lifetime confirmations in less than two years is better than any 2-year period from 1995 through 2000. We have reduced judicial vacancies to 47, which is the lowest number and lowest vacancy percentage in 13 years. During the entire 8-year term of President Clinton it was never allowed by Republicans to get that low. We have made tremendous progress. These achievements have not been easy.

The administration has chosen confrontation with the Congress, with the Senate and with this committee. We are now proceeding at three to four times the pace Republicans maintained in reviewing President Clinton's judicial nominees. We have reached the point where the Judiciary Committee and the Senate are often moving too fast on some nominations and we risk becoming a racing conveyor belt that rubber stamps rather than examines these lifetime appointments. Democrats have worked hard to repair the damage to the confirmation process and achieved significant results. Republicans seem merely results oriented and interested in ideological domination of the Federal courts.

As Republicans turn their sights on the propriety of the filibuster in connection with judicial nominations and speculate about changing the rules and suing the Senate, I trust the Republican majority will not overlook the precedent on this question. Republicans not only joined in the filibuster of Abe Fortas to be Chief Justice of the United States Supreme Court, they organized the filibuster of Stephen Breyer to the 1st Circuit, Judge Rosemary Barkett to the 11th Circuit, Judge H. Lee Sarokin to the 3rd Circuit, and Judge Richard Paez and Judge Marsha Berzon to the 9th Circuit. The truth is that filibusters on nominations and legislative matters and extended debate on judicial nominations, including circuit court nominations, have become more and more common on the initiative of Republicans working against Democratic nominees. Now that a Republican President, intent on packing the courts with ideologues, has seen two nominees delayed by filibusters, and even though the other 123 judges he nominated have been confirmed, partisans want to change the rules to make it easier for this President to get his way.

Of course, when they are in the majority Republicans have more successfully defeated nominees of a Democratic President by refusing to proceed on them and have not publicly explained their actions, preferring to act in secret under the cloak of anonymity. From 1995 through 2001, when Republicans previously controlled the Senate majority, Republican efforts to defeat President Clinton's judicial nominees most often took place through inaction and anonymous holds for which no Republican Senator could be held accountable. Republicans held up almost 80 judicial nominees who were not acted upon during the Congress in which President Clinton first nominated them and eventually defeated more than 50 judicial nominees without a recorded Senate vote of any kind, just by refusing to proceed with hearings and Committee votes. These are just the sorts of stealth tactics Democrats have rejected.

Beyond judicial nominees, Republicans also filibustered the nomination of executive branch nominees. They successfully filibustered the nomination of Dr. Henry Foster to become Surgeon General of the United States in spite of two cloture votes in 1995. Dr. David Satcher's subsequent nomination to be Surgeon General also required cloture but he was successfully confirmed.

Other executive branch nominees who were filibustered by Republicans included Walter Dellinger's nomination to be Assistant Attorney General. Two cloture petitions were required to be filed on that nomination and both were rejected by Republicans. We were able finally to obtain a confirmation vote for Professor Walter Dellinger after significant efforts and he was confirmed to be Assistant Attorney General with 34 votes against him. He was never confirmed to his position as Solicitor General because Republicans had made clear their opposition to him. In addition, in 1993, Republicans objected to a number of State Department nominations and even the nomination of Janet Napolitano to serve as the U.S. Attorney for Arizona, resulting in more cloture petitions. In 1994, Republicans successfully filibustered the nomination of Sam Brown to be an Ambassador. After three cloture petitions were filed, his nomination was returned to President Clinton without Senate action. Also in 1994, two cloture petitions were required to get a vote on the nomination of Derek Shearer to be an Ambassador. And it likewise took two cloture petitions to get a vote on the nomination of Ricki Tigert to chair the FDIC. So when Republican Senators now talk about the Senate Executive Calendar and presidential nominees, they must be reminded that they recently filibustered many, many qualified nominees.

Filibusters should be and are rare. That there are two this year is a direct result of the strategy of confrontation sought by the White House and Senate Republicans. The administration holds the key to ending the Estrada impasse, as it has for the last year. It should cooperate with the Senate and provide access to his work papers, following the example set by all previous Republican and Democratic administrations.

The renomination of Judge Owen was most ill-advised and unprecedented. Her nomination had already been rejected after fair hearings and thorough debate and a committee vote last year. Some apparently want to rewrite the rules so that this President can have every nominee confirmed, no matter how divisive and controversial, by the Republican Senate majority.

Recently, I heard a respected Republican and senior advisor to the majority leader describe cloture as ''the fulcrum on which you balance the rights of the individual and the rights of the institution.'' He explained how important the rights of the minority party are in the Senate and how Senate rules are deliberately constructed to reflect that and protect the minority. That Republicans are now intent on rewriting longstanding Senate rules shows just how partisan and ends-oriented they have become.

The President promised to be a uniter not a divider, but he has continued to send us judicial nominees that divide our nation. He has even managed to divide Hispanics across the country with the nomination of Mr. Estrada. He has managed to outrage disabled individuals by his nomination of Jeffrey Sutton. The nomination and confirmation process begins with the President. I, again, urge him to work with us to identify and nominate qualified, consensus, mainstream nominees who all Americans can be confident will be fair and impartial and to abandon his ideological court packing scheme.

Just yesterday an editorial appeared in the Rutland Herald noting: ''[P]acking the court with right-wing ideologues is a program that Democrats may legitimately question. The Senate is required to consent to the president's judicial nominees because of the checks and balances created by the Constitution to restrain presidential power. The right wing now chafes under that restraint, but [Senators] have every reason to stand firm in order to bring balance to the judiciary.'' I ask unanimous consent that the full editorial be printed in the RECORD.

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

[From the Rutland Herald, May 7, 2003]

A Senate Judiciary subcommittee held a hearing Tuesday to highlight what Republicans claim is an abuse of the Senate rules by Democrats seeking to hold up President Bush's judicial nominees.

The subcommittee hearing was described by one Democratic aide as a ''dog and pony show.'' It is part of the ideological warfare unleashed by the right wing to intimidate and destroy its opposition. The Republicans' complaint abouut Democratic obstructionism with regard to judicial nominees makes a villain out of Sen. Patrick Leahy, but their case is bogus and based on a foundation of hypocrisy.

The Democrats have kindled Republican wrath because the Democrats have had the temerity to block two nominees. Two. In the meantime, the Senate has confirmed 123 Bush nominees. The vacancy rate in the judiciary is at a 13-year low. When the Democrats took control of the Senate in 2001, the Republicans had left open 111 judicial vacancies. Now there are 43.

Members of the judiciary have remarked on how the Bush administration has staffed the Justice Department with fiercely uncompromising ideologues intent, not just on dealing with the opposition, but on destroying it. How else can one account for the war declared by Republicans over two judicial nominees who failed to pass muster?

The subcommittee hearing is ostensibly meant to examine the question of whether the Democrats' use of the filibuster to block judicial nominees is constitutional. The filibuster is a delaying tactic in which one side refuses to end debate on a particular question. According to Senate rules, the Senate can end a filibuster with 60 out of 100 votes. Certainly, the filibuster is anti-majoritarian, but over the years it has been used effectively by both Republicans and Democrats.

Now that the Democrats have shown they are adept at using the filibuster, the Republicans have begun to froth that it is unconstitutional. They are even claiming there is some kind of exception to the filibuster rule for judicial nominees, though it is a claim without any basis in law that the Republicans would quickly abandon as soon as they found themselves in the minority.

It is hard to defend the filibuster as a democratic method. But for the Republicans suddenly to wax indignant about the filibuster now that it has been turned against them is hyppcrisy enough to shock and awe. From 1995 to 2000 Republicans blocked one-third of President Clinton's judicial nominees by a variety of methods that were as anti-majoritarian as the filibuster, including the failure of the Judiciary Committee even to schedule hearings and including the secret hold, by which a senator can block a nominee merely on his or her say-so.

If anger and self-righteousness signify the rightness of one's cause, the Republicans are making a good show of it. But packing the court with right-wing ideologues is a program that Democrats may legitimately question. The Senate is required to consent to the president's judicial nominees because of the checks and balances created by the Constitution to restrain presidential power. The right wing now chafes under that restraint, but Leahy and his allies have every reason to stand firm in order to bring balance to the judiciary.

Mr. LEAHY. The vote is scheduled for what time?

The PRESIDING OFFICER. The time for the vote is 1:45.

Mr. LEAHY. Have we reached that time?

The PRESIDING OFFICER. We have about a minute and a half.

Mr. LEAHY. I can understand the confusion. We seem to have a number of clocks facing different places.

I tell the distinguished occupant of the chair that I have been around here long enough to recall a time when we were going to end at a certain time in a very late session, and the time stood still. We were very close to finishing. I think the time we had to finish was at midnight. I remember the clock getting all the way up there to 3 minutes

to midnight. For the next hour, the clock was there at 3 minutes to midnight. Suddenly we worked out the last thing, the clock magically sprung forward—not totally magically, somebody pulled it forward. We were at midnight and, with a sigh of relief, we went out. Now I believe we are at the time.

I yield the floor.

Mr. HATCH. Mr. President, tomorrow is the 9th of May, which marks the beginning of the third year that the nominations of Miguel Estrada to the DC Circuit and Priscilla Owen to the Fifth Circuit have been sitting in the Senate. This truly is not a good record for the Senate.

On May 9, 2001, the President sent to the Senate 11 nominations, including those of Miguel Estrada and Priscilla Owen. I regret that a minority of Senators in this body continue to deny a final vote on the confirmation of these nominees. It is troubling that we have not yet been able to confirm these nominees who now are facing unprecedented filibusters in the Senate.

Let me again quote a recent editorial, published in the Atlanta Journal-Constitution, which discusses the filibusters of Priscilla Owen and Miguel Estrada, noting ''the first time simultaneous filibusters against judicial nominees have occurred in the U.S. Senate.'' The editorial continues:

Both Owen and Estrada are superbly qualified in every respect. Yet on Owen, those who complain that a ''glass ceiling'' exists for women of achievement are busily constructing one to keep her in her place. And those who complain that the federal bench lacks ''diversity'' find Estrada to be too much diversity for their taste. He is considered to be a conservative, and the interest groups that drive the Democratic Party nationally fear Owen is, too, at least on their abortion litmus test.

The fear with Owen and Estrada is that one or both will be nominated to the U.S. Supreme Court should a vacancy occur. Senate Democrats are determined to keep off the Circuit Court bench any perceived conservative who has the credentials to serve on the U.S. Supreme Court.

As the editorial points out, some Senate Democrats appear willing to use whatever obstructionist tactics it takes, based on any convenient rationale, to defeat the President's nominees. While the rationales may be different, the motivation in both cases is the same—it is to block this Senate from expressing the will of the majority with regard to these nominations.

I have already pointed out the double standard being applied against Miguel Estrada and Priscilla Owen. However, it may be more than a so-called double standard. I am beginning to conclude that no standards are being applied, only political tactics. This game plan of delay and obstructionism that some Democratic Senators are following is no longer surprising, but it is getting somewhat contradictory. In the case of Mr. Estrada, Democrats say they can't vote for the nominee because they don't know enough about him. They allege he didn't answer their questions and therefore they must have Department of Justice confidential memoranda he wrote while he was a line attorney in the Solicitor General's office.

There are no such claims about Justice Owen. Democrat opponents admit they know enough about her, that she did answer the questions, and that she has a record they can review. There are no phony excuses. They simply oppose her on philosophical grounds namely, her interpretation of the Texas parental notification statute that applies to minor girls seeking an abortion.

We hear over and over that Justice Owen is a controversial or extremist nominee. Those seem to be the standard shorthand descriptions of a nominee who doesn't toe the line drawn by the abortion-rights and trial lawyer interest groups.

In truth, Justice Owen is a consensus nominee. A bipartisan majority of the Senate supports her confirmation. The American Bar Association has awarded her a unanimous well qualified rating, their highest rating, and the gold standard formerly used by many of my Democratic colleagues. She is a well educated, highly experienced, and respected jurist.

Now, some critics of Justice Owen have fixated on a few rulings made by Justice Owen in some parental notification cases and allege that she is out of the mainstream on her court or that she is a regular dissenter in such cases. The facts show Justice Owen has been well within the mainstream of her court in the 14 decided notification cases in Texas, joining the majority judgment in 11 of those cases. The fact of the matter is that the liberal interest groups will find any excuse to employ an abortion litmus test, and they have used it with reckless abandon against Justice Owen, but that doesn't change the facts. In fact, we don't even know Justice Owen's views on abortion and it is improper to make assumptions.

Justice Owen has done what a nominee must do—commit to following the law, including Roe v. Wade. And that is all we ask of nominees.

Turning to Mr. Estrada, the real rationale for opposing him has nothing to do with access to confidential Justice Department documents. It has nothing to do with allegations that Mr. Estrada did not answer the questions. But it has everything to do with attempts to prevent a Republican President from appointing the first Hispanic to the DC Circuit.

What the filibusters of Miguel Estrada and Priscilla Owen have in common is that they are preventing well qualified nominees from getting an up or down vote before the full Senate. They are tyranny of the minority at its worst. It is unfortunate that we must have these cloture votes at the end of this 2-year period since the nomination of Mr. Estrada and Justice Owen. There is simply no good reason to continue them. It is long past time for an up or down. I urge my colleagues to vote for cloture.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 21, the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin Hatch, Judd Gregg, Norm Coleman, John E. Sununu, John Cornyn, Larry E. Craig, Saxby Chambliss, Lisa Murkowski, Jim Talent, Olympia Snowe, Mike DeWine, Michael B. Enzi, Lindsey Graham, Jeff Sessions, Wayne Allard, Mike Capo.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Alaska (Ms. MURKOWSKI) is necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

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

The yeas and nays resulted—yeas 54, nays 43, as follows:

[Rollcall Vote No. 143 Ex.]

YEAS—54

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

NAYS—43

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

NOT VOTING—3

Kennedy	Lieberman	Murkowski

The PRESIDING OFFICER. On this vote, the yeas are 54, the nays are 43.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 86, the nomination of Priscilla R. Owen of Texas to be United States Circuit Judge for the Fifth Circuit.

Bill Frist, Orrin Hatch, John Cornyn, Michael B. Enzi, Jim Talent, Judd Gregg, Jeff Sessions, Wayne Allard, Mike Crapo, Thad Cochran, Mitch McConnell, Susan Collins, Don Nickles, George Allen, Kay Bailey Hutchison, Gordon H. Smith, John Warner.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Priscilla Richman Owen to be United States Circuit Judge for the Fifth Circuit shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Alaska (Ms. MURKOWSKI) is necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

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

The yeas and nays resulted—yeas 52, nay 45, as follows:

[Rollcall Vote No. 144 Ex.]

YEAS—52

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

NAYS—45

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

NOT VOTING—3

Kennedy	Lieberman	Murkowski

The PRESIDING OFFICER. On this vote the yeas are 52, the nays are 45. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent the Senate now stand in recess until 3:20 p.m.

Mr. CARPER. Reserving the right to object, if the Senator will defer for just a moment? I ask unanimous consent to make a brief statement, maybe 1 minute.

Mr. HATCH. Of course.

VOTE EXPLANATION

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, early this morning the train I was traveling on from Wilmington to Washington experienced mechanical difficulties causing us to arrive at Union Station more than one-half hour late. As a result, I missed maybe my second or third vote in the U.S. Senate. I missed the vote on the Resolution of Ratification of the NATO expansion treaty. Had I been here I would have voted yes.

I ask unanimous consent the RECORD reflect my reasons for missing the vote and how I would have voted had I been here.

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

RECESS

Mr. HATCH. Mr. President, I renew my request to have the Senate stand in recess until 3:20 p.m.

There being no objection, the Senate, at 2:34 p.m., recessed until 3:20 p.m. and reassembled when called to order by the Presiding Officer (Mr. CRAPO).

The PRESIDING OFFICER. In my capacity as a Senator from the great State of Idaho, I suggest the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

FOREIGN INTELLIGENCE SURVEILLANCE ACT—Continued

AMENDMENT NO. 536

(Purpose: To establish additional annual reporting requirements on activities under the Foreign Intelligence Surveillance Act of 1978)

Mr. FEINGOLD. Mr. President, I call up amendment No. 536.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 536.

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

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

The amendment is as follows:

(Purpose: To establish additional annual reporting requirements on activities under the Foreign Intelligence Surveillance Act of 1978)

At the end, add the following:

SEC. 2. ADDITIONAL ANNUAL REPORTING REQUIREMENTS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) ADDITIONAL REPORTING REQUIREMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by redesignating—

(A) title VI as title VII; and

(B) section 601 as section 701; and

(2) by inserting after title V the following new title VI:

''TITLE VI—REPORTING REQUIREMENT

''ANNUAL REPORT OF THE ATTORNEY GENERAL

''SEC. 601. (a) In addition to the reports required by sections 107, 108, 306, 406, and 502 in April each year, the Attorney General shall submit to the appropriate committees of Congress each year a report setting forth with respect to the one-year period ending on the date of such report—

''(1) the aggregate number of non-United States persons targeted for orders issued under this Act, including a break-down of those targeted for—

''(A) electronic surveillance under section 105;

''(B) physical searches under section 304;

''(C) pen registers under section 402; and

''(D) access to records under section 501;

''(2) the number of individuals covered by an order issued under this Act who were determined pursuant to activities authorized by this Act to have acted wholly alone in the activities covered by such order;

''(3) the number of times that the Attorney General has authorized that information obtained under this Act may be used in a criminal proceeding or any information derived therefrom may be used in a criminal proceeding; and

''(4) in a manner consistent with the protection of the national security of the United States—

''(A) the portions of the documents and applications filed with the courts established under section 103 that include significant construction or interpretation of the provisions of this Act, not including the facts of any particular matter, which may be redacted;

''(B) the portions of the opinions and orders of the courts established under section 103 that include significant construction or interpretation of the provisions of this Act, not including the facts of any particular matter, which may be redacted.

''(b) The first report under this section shall be submitted not later than six months after the date of the enactment of this Act. Subsequent reports under this section shall be submitted annually thereafter.

''(c) In this section, the term 'appropriate committees of Congress' means—

''(1) the Select Committee on Intelligence and the Committee on the Judiciary of the Senate; and

''(2) the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.''.

(b) CLERICAL AMENDMENT.—The table of contents for that Act is amended by striking the items relating to title VI and inserting the following new items:

''TITLE VI—REPORTING REQUIREMENT

''Sec. 601. Annual report of the Attorney General.

''TITLE VII—EFFECTIVE DATE

''Sec. 701. Effective date.''.

Mr. FEINGOLD. Mr. President, this amendment would simply require the Department of Justice to report to the Intelligence Committee and the Judiciary Committee about the use of this new lone-wolf exception to FISA. With this information, Congress will be better able to assess the need for reauthorization as the sunset provision in the bill approaches. I am pleased that the amendment has been agreed to by the sponsors of the bill.

I ask unanimous consent that this amendment be agreed to under the previous order.

The PRESIDING OFFICER. Under the previous order, the amendment is agreed to.

The amendment (No. 536) was agreed to.

Mr. FEINGOLD. Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, this morning I noted in detail the provisions of this amendment, why I supported the amendment and why I thought it was a good thing, and therefore any reference to further discussion on it can be made to the comments I made on it this morning.

Mr. FEINGOLD. Mr. President, I thank the Senator from Arizona for his cooperation in working together to provide this measure of accountability to this important piece of legislation.

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.

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

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

AMENDMENT NO. 537

(Purpose: To propose a substitute)

Mrs. FEINSTEIN. Mr. President, I call up amendment No. 537.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself and Mr. ROCKEFELLER, Mr. LEAHY, Mr. EDWARDS, Mr. FEINGOLD, Mr. DODD, Mr. WYDEN, and Mrs. BOXER, proposes an amendment numbered 537.

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

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

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. PRESUMPTION THAT CERTAIN NON-UNITED STATES PERSONS ENGAGING IN INTERNATIONAL TERRORISM ARE AGENTS OF FOREIGN POWERS FOR PURPOSES OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) PRESUMPTION.—(1) The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after section 101 the following new section:

''PRESUMPTION OF TREATMENT OF CERTAIN NON-UNITED STATES PERSONS ENGAGED IN INTERNATIONAL TERRORISM AS AGENTS OF FOREIGN POWERS

''SEC. 101A. Upon application by the Federal official applying for an order under this Act, the court may presume that a non-United States person who is knowingly engaged in sabotage or international terrorism, or activities that are in preparation therefor, is an agent of a foreign power under section 101(b)(2)(C).''.

(2) The table of contents for that Act is amended by inserting after the item relating to section 101 the following new item:

''Sec. 101A. Presumption of treatment of certain non-United States persons engaged in international terrorism as agents of foreign powers.''.

(b) SUNSET.—The amendments made by subsection (a) shall be subject to the sunset provision in section 224 of the USA PATRIOT Act of 2001 (Public Law 107–56; 115 Stat. 295), including the exception provided in subsection (b) of such section 224.

Mrs. FEINSTEIN. Mr. President, I rise to offer a substitute amendment to S. 113, the Kyl-Schumer FISA bill. I ask you to bear with me because the explanation goes on for a while.

I am also pleased that Senator ROCKEFELLER, the ranking member on the Intelligence Committee, and Senator LEAHY, the ranking member of the Judiciary Committee, are cosponsors of this amendment. I am pleased to also acknowledge that Senators DODD, EDWARDS, FEINGOLD, BOXER, and WYDEN are also cosponsors of the amendment.

Let me try to briefly describe the difference between current law, S. 113, and my amendment.

S. 113 is the Kyl-Schumer FISA amendment. First, the Kyl-Schumer amendment only applies to non-U.S. persons. I want to make clear that it does not cover green card holders under that amendment.

Under current law, the FISA court may only grant a FISA application against a non-U.S. person if the Government can show probable cause that the target is working on behalf of a foreign power or a terrorist group. The Government also has to certify that it is seeking foreign intelligence information that can't be obtained by any other means.

As I understand the Kyl-Schumer bill, it drops a primary requirement for FISA warrants; that is, the individual or the target be agents of a foreign power. Under Kyl-Schumer, this prerequisite is gone. That is what the so-called lone wolf deals with.

This would then give the FISA court no discretion to deny applications for FISA orders against a true so-called lone wolf. These are alleged international terrorists operating completely on their own. This is confusing. In other words, current law gives the FISA court no discretion to grant FISA orders in closed cases. But S. 113—Kyl-Schumer—gives judges no discretion to deny FISA the FISA court application in closed cases. Both of these circumstances raise certain problems.

My amendment is essentially a compromise. It grants the court a presumption. So the FISA court may presume that a target is an agent of a foreign power, or the court may choose not to invoke that presumption. The bottom line is the court is given some discretion.

In other words, the court may choose to grant a FISA order despite a lack of evidence that a target is working on behalf of a foreign power. Similarly, the court may choose to deny an order against a true lone wolf. It is up to the court.Federal judges in title III criminal cases have similar discretion. Although the standard there is about whether the Government can show probable cause that a person has committed a crime or will commit a crime, that is a very different standard than under FISA. Federal judges have not abused that discretion and, in fact, in rare cases have been able to act as a check on the Government to prevent overreaching and abuse.

Why do the sponsors of S. 113 show less trust for FISA judges in the FISA content? In fact, such trust is even more warranted in the FISA content. Not only is the FISA process secret and hard to keep accountable, but the FISA court has only denied one FISA application in its 25-year history.

Such a lack of trust is even less necessary given the fact that even if the Government is unable to get a FISA order against a target, it remains completely free to use all the tools of the criminal process under title III to get search and wiretap orders against the target.

The bottom line is, our amendment preserves FISA's agent-of-a-foreign-power requirement without jeopardizing our security. Our amendment allows the Government to get FISA orders against suspected international terrorists even in close cases where the Government cannot show the target is working on behalf of a foreign power or terrorist group. However, unlike S. 113, the amendment also ensures the FISA court is more than a rubberstamp and has discretion to deny a FISA application if the Government overreaches by attempting to use FISA authority.

I now would like to discuss the issue in somewhat greater detail.

Mr. President, at times of crisis, it is possible the Government can overreach in both legislative and executive decisionmaking with respect to our criminal and intelligence laws. That can have unfortunate consequences for both our security and individual rights.

The Foreign Intelligence Surveillance Act, or FISA, was passed in 1978. It was the first statute ever passed in

the United States to provide a statutory procedure for the authorization of clandestine activities of our Government to obtain foreign intelligence.

Before it passed, then-Attorney General Griffin Bell testified in favor of the bill before Congress. He noted the ''delicate balance'' that needed to be struck between ''adequate intelligence to guarantee our Nation's security on the one hand and preservation of basic human rights on the other.''

He stated:

In my view this bill strikes the balance, sacrifices neither our security nor our civil liberties, and assures that the abuses of the past will remain in the past. . . .

Now, what does he mean by ''abuses of the past''? Decades earlier, America saw what happened in World War II with Japanese Americans who were removed from their homes, their businesses, and their schools, and placed in interment camps in violation of their rights. We do not want that to happen ever again in this country.

I am not saying this is an identically similar situation. I am concerned, however, about zealousness and overreach because now we are engaged in a global war on terror. In conducting this war, we must be careful that we not overreach when the temptations are so great.

This kind of war is unprecedented for the United States. It is unprecedented and unbelievable that anybody could fly four big planes, three into buildings, and kill 3,000 people. This is beyond our ken. America and Americans want to protect our homeland and our individuals, notwithstanding this is an entirely secret process and, as such, the laws that govern it must be balanced, must be carefully crafted, and must prevent it, lest someone use them to overreach. It has happened in the past, so you can assume it could well happen in the future. This is especially true, as I said, with FISA.

I supported reporting S. 113, the Kyl-Schumer FISA bill we are debating, in the Judiciary Committee. I agree with my colleagues—there is a clear problem here, needing a solution; namely, the potential difficulty the Government may have in obtaining FISA orders against certain international terrorist so-called ''lone wolves.'' These are people who have no affiliation with a terrorist group, no affiliation as an agent of a foreign power.

Under FISA, a ''foreign power'' is simply defined as ''two people conspiring,'' so it is a very easy goal and target. A problem arises in cases where the Government knows of a foreign individual who may be involved in terrorism but cannot yet prove a connection to foreign groups or governments. This problem stems from the proof requirement under FISA in current law.

To get a FISA order against a foreign visitor to the United States under current law, the Government needs to show two key things:

First, that the individual is a foreign power or an agent of a foreign power. Again, that is defined as two people working together. A foreign power could be a foreign government or an international terrorist group as defined.

And second, that it is seeking ''foreign intelligence information'' that cannot be obtained by other means.

This symbolizes the very purpose of FISA: to gather foreign intelligence. Criminal courts are for criminal cases, and the FISA court was set up specially to deal with cases where the Government wishes to obtain information or intelligence about the activities of foreign powers.

The problem is this: Under this current standard, it may well be difficult for the Government to meet the foreign power requirement if the Government does not yet have enough evidence of a connection to a foreign group, entity, or power. Some have described this problem as the ''false lone wolf'' problem, where you have an individual who may appear at first to be operating as a ''lone wolf,'' even though that individual is really an agent of a larger group.

That was one of the alleged problems with the pre-September 11 investigation into Zacarias Moussaoui. The FBI did not learn until after September 11 that Moussaoui had links to al-Qaida and may have been the intended 20th hijacker.

As a result, the Government may have been reluctant to request a FISA warrant because they did not think the intelligence they had could connect Moussaoui to an international group or government.

So there is no question in my mind that we need to amend FISA to fix this problem. And I applaud my colleagues, Senators KYL and SCHUMER, for working so diligently to solve it. But the Kyl-Schumer bill also redefines ''agent of a foreign power'' to include any non-U.S. individual preparing to engage in international terrorism. In other words, it essentially eliminates the foreign power requirement altogether.

This change would allow the Government to get a FISA search or wiretap order against any foreign individual in the United States who is preparing to engage in international terrorism, regardless of whether the person is really an agent of a foreign government or terror group, and regardless of whether there is any potential to gather foreign intelligence.

Again, it is this foreign intelligence component that defines the very purpose of FISA. As a result, I believe this change goes too far.

Under S. 113, for the first time ever, the Government will be able to use FISA against any non-U.S. citizen preparing to engage in international terrorism—even individuals whom the Government knows have no connection at all to anyone else engaged in international terrorism.

There would be no check at all on the Government's use of FISA against many common criminals who just happen to be noncitizens and, therefore, the Government might be able to use this secret FISA court to obtain warrants that: (A) are easier to get; (B) last longer; and (C) are less subject to normal judicial scrutiny than criminal warrants under title III or regular criminal statutes.

FISA wiretap orders, for instance, are good for 4 times longer than normal criminal warrants—120 days versus 30 days—giving the Government a clear incentive to use this process even against common criminals. These orders can be reauthorized indefinitely each year for 1-year periods. The same is true for physical search orders under FISA, although these are good for 90 days, and 1-year extensions are subject to the requirement in current law that the judge find ''probable cause to believe that no property of any United States person will be acquired during the period.''

Under FISA, as modified by S. 113, the Government must show by probable cause only that a foreign national is engaged in international terrorism or preparation thereof. You might listen to that and you might think: What is wrong with that? We all want that. I want it, too. But in many instances, this probable cause standard will be easier to meet than the traditional criminal probable cause standard.

For example, for a title III wiretap, the Government must show that there is probable cause to believe an individual is about to commit or has committed an enumerated crime. To get a search order, the Government must show probable cause that the search will result in the discovery of offending items connected with the criminal activity. However, under S. 113, the Government need only show probable cause that the person is engaging in ''activities in preparation'' for international terrorism. Many ''activities in preparation'' for international terrorism are not crimes.

For example, a foreign visitor who bought a one-way airline ticket and a box cutter would arguably qualify as a person engaging in activities in preparation for international terrorism, even in the absence of other evidence that he or she might be an international terrorist.

However, these two activities, taken alone, would clearly not demonstrate probable cause that the person would commit a crime. These activities may be entirely innocent. As a result—and I don't believe this is anyone's intent—S. 113 could easily serve as a clarion call to all aggressive prosecutors who want to listen in on or search the homes of targets of investigation without ever having to prove that any crime may be committed or that foreign intelligence may be gathered.

By allowing FISA to be used against all solo suspected international terrorists, S. 113 runs counter to the whole purpose of FISA, which is to allow the Government to get foreign intelligence by searching and wiretapping people

working for other countries and groups against U.S. interests.

S. 113 essentially eliminates any discretion the FISA court has to turn down a case—this is my big problem with it—thus enabling the Government to overreach. I am not saying that it will overreach. But because it is a secret process, the laws we pass have to prevent that overreach.

By nullifying the requirement that the target of an investigation has some connection, any connection, to a foreign entity or government, this legislation essentially makes the FISA court a rubberstamp. The court will be required to grant a FISA order, even if there is no probable cause to indicate a connection to a foreign power; indeed, even if there is clear evidence that the individual is operating completely on their own. In fact, even if the Government admits that the terrorist is operating alone and that there is no foreign intelligence to be gathered, the FISA court must still grant the order under S. 113.

That is not what FISA is meant to be. Put simply: The legislation goes too far.

Let me be clear: We who are sponsoring this amendment are not trying to protect international terrorists, and our amendment does nothing to protect them. The vast resources of the Federal Government and the powerful tools of the criminal process remain available to target and investigate any terrorist against whom the Government is unable to get a FISA order.

What our amendment will do is retain the original purpose of FISA—the seeking of foreign intelligence. S. 113 would not.

Our amendment is simple. Rather than simply eliminating the foreign power requirement altogether, our amendment would allow the FISA court judge to presume that a foreign terrorist is also an agent of a foreign power, even if there is no evidence supporting that presumption. On the other hand, under our amendment, the FISA court could also refuse to presume this connection in troubling cases of Government overreach. Thus, a FISA court judge would have some discretion.

What does this mean? In the Moussaoui case, for instance, even though the Government did not yet have evidence that Moussaoui was acting as an agent of a foreign power, both our amendment and S. 113 would allow the Government to get a warrant. The only difference is that our amendment would allow the judge to carefully look at the case and, if the court determined Moussaoui was clearly acting alone, the warrant could be denied.

I know some will argue that this casts too much doubt upon the outcome of cases and that, as a result, FISA orders will be too hard to obtain. But in most cases, if you think about it, the outcome will be exactly the same, whether under our amendment or the underlying bill.

Others may argue that this amendment might give liberal judges too much power to deny FISA orders in every case or, as Senator SCHUMER put it today, ''inject gray into the statute.'' But in reality, I believe these judges should have some discretion. This is an entirely secret process. By providing this presumption, we give judges that discretion. That is, in fact, a good thing.

Liberal judges can always find ways to deny a FISA order, even under S. 113, if they are determined to do so. For instance, a judge could simply decide there is no probable cause showing that an individual is engaged in international terrorism. That is a requirement in both S. 113 and our amendment.

The bottom line is that we can and should preserve the foreign power requirement of FISA without jeopardizing our security. Under either approach, the Government will be able to get FISA orders against international terrorists, even if the Government cannot meet the foreign power requirement.

Bottom line, again: The only difference between the two approaches is that our amendment preserves some limited discretion so the FISA court could stop the Government from overreaching against those individuals who have no connection to a foreign conspiracy. Let me say, if they have no connection to a foreign conspiracy, you can get the title III criminal warrant.

I urge my colleagues to support the amendment and, therefore, support the underlying purposes of FISA.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mrs. FEINSTEIN. I yield such time as the Senator from Vermont, the ranking member of the Judiciary Committee, requires.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the distinguished Senator. I will not speak long.

In times of national stress there is an understandable impulse for the government to ask for more power. Sometimes more power is needed, but sometimes it is not.

After the September 11 attacks, we worked together in a bipartisan fashion and with unprecedented speed to craft and enact the USA PATRIOT Act, which enhanced the government's surveillance powers.

Now, as we consider S. 113—and we anticipate a possible sequel to the USA PATRIOT Act—it is vital for us first to examine and understand how Federal agencies are using the power that they already have. We must answer two questions: First, is that power being used effectively? Our citizens want not only to feel safer, but to be safer. They need results, not rhetoric.

Second, is that power being used appropriately, so that our liberties are not sacrificed, the openness of our society and our government are preserved, and our tax dollars are not squandered?

Unfortunately, the FBI and the Department of Justice have either been unwilling or unable to help us to answer these basic questions. Moreover, the information that we have gleaned on our own through our bipartisan oversight efforts has not inspired confidence.

In February, Chairman GRASSLEY, Chairman SPECTER and I released a detailed report based on the oversight that the Judiciary Committee conducted in the 107th Congress. That report distilled our bipartisan findings and conclusions from numerous hearings, classified briefings and other oversight activities. Our oversight demonstrated the pressing need for reform of the FBI. In particular, it focused on the FBI's failures in implementing what is already in FISA.

The administration's response to our bipartisan oversight report has been to dismiss it as ''old news'' relating to problems that are all already fixed. In short, ''everything is fine'' at the FBI and they plan to do nothing to respond to the systemic criticisms in the Specter, Grassley, Leahy report. Predictably, however, Congress is asked yet again to expand the FISA statute.

The bill that we are considering, S.113, adopts a ''quick fix'' approach. With slick names like the ''Moussaoui fix,'' and the ''lone wolf'' bill, it is aimed at making Americans feel safer, but it does nothing to address the problems that actually plague our intelligence gatherers. It does nothing to fix the real problems that plagued the FBI before 9/11 and that continue at the FBI.

In private briefings, even FBI representatives have stated that they do not need this change in the law in order to protect against terrorism. They are getting all the warrants they want under the current law.

Sunset provisions, such as the one I helped add during the Judiciary Committee markup, allow us to adopt such measures as S. 113 on a temporary basis. The reporting requirement that is being added to the bill on the floor is another welcome improvement, which will help us to ascertain whether this surveillance tool is working properly or not. The reporting requirement is similar to those proposed in a bill I introduced with Senators GRASSLEY and SPECTER—S. 436, the Domestic Surveillance Oversight Act.

While there is little evidence that this bill is necessary, it does create significant problems. First, it tears FISA from one of its most basic moorings. FISA was intended to assist in gathering intelligence about foreign powers and their agents. The Kyl-Schumer proposal would simply read that requirement out of the law for a whole class of FISA cases.

As introduced, the bill essentially said that a ''person'' is now a ''foreign power,'' which makes little sense as a matter of logic or policy. As reported by the Judiciary Committee, the bill's wording makes more sense, but the fundamental policy problem remains.

Second, in the rare case of a true ''lone wolf,'' our federal law enforcement agents already have potent tools at their disposal, including the title III wiretap, the rule 41 search warrant, and the grand jury subpoena. These provide ample means to combat isolated criminal acts, but with more accountability and judicial supervision than the FISA surveillance authorities.

Far from addressing a true problem, then, all that S.113 would do is encourage the use of the secret, unchecked FISA process for an entire class of cases that are more appropriately handled as criminal matters.

To the extent that some believe that there is a problem that needs to be addressed, I support the more measured and practical approach that Senator FEINSTEIN developed, and that I was pleased to cosponsor. The Feinstein approach is to create a statutory presumption to assist the FBI in terrorism cases.

Using this approach, when the government shows probable cause to believe that a non-U.S. person is engaging in international terrorism, the FISA Court may presume that the person is also an agent of a foreign power. This permissive presumption would allow law enforcement some extra leeway in international terrorism cases, but without simply removing the foreign power nexus from a huge class of FISA matters altogether.

I commend Senator FEINSTEIN for her work on this amendment. I believe it is a constructive and reasonable compromise. It would give the FBI what it claims to need as a practical matter, to ensure that it can use FISA against individuals like Zacarias Moussaoui, whose ties to a foreign power may be difficult to prove.

At the same time, the amendment would preserve some discretion on the part of the FISA court to determine that an individual should not be subject to surveillance because he is not, in fact, an agent of a foreign power. The FISA court should not become an automatic adjunct of the executive branch. That would destroy the checks and balances that keep us all free. Let's make sure they have the ability to act as a court.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. FEINGOLD. Mr. President, I ask the Senator from California to yield me some time so I can speak in support of the amendment.

Mrs. FEINSTEIN. I am happy to yield as much time as the Senator requires.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I agree with the Senator from California that S. 113 is the wrong way to fix the Foreign Intelligence Surveillance Act. The approach taken in S. 113 would eliminate the current requirement in FISA that the individual who is the target of a warrant must be an agent of a foreign power. This means that S. 113 may very well result in FISA serving as a substitute for some of the most important criminal laws we have in this country. Senator FEINSTEIN's permissive presumption amendment would allow the Government to obtain FISA warrants against suspected lone wolf international terrorists without unnecessarily eliminating an essential element of FISA, and that is the agent of a foreign power requirement.

FISA, as the Senator from California has very carefully and effectively pointed out, represents an important exception to traditional constitutional restraints on criminal investigations, allowing the Government to gather foreign intelligence information without having probable cause that a crime has been or is going to be committed. I will repeat that. This is something the Government can do without having probable cause that a crime has been or is going to be committed. That is a major exception to our normal understanding about how criminal proceedings should be conducted under our Constitution. The courts have permitted the Government to proceed with surveillance in this country under FISA's lesser standard of suspicion because the power is limited to investigations of foreign powers and their agents.

Senator FEINSTEIN ably pointed out the history behind this and the careful balance that Attorney General Griffin Bell discussed at the time, and how important that balance was for such an unusual exception to be made to our rules about criminal proceedings.

S. 113 writes out of the statute a key requirement necessary to the lawfulness of intrusive surveillance powers that would otherwise simply be unconstitutional.

FISA's own appellate court, the Foreign Intelligence Surveillance Court of Review, discussed in a November 2002 decision why a FISA warrant does not require a showing of probable cause of criminal activity. The court stated that FISA is constitutional in part because it provides ''another safeguard . . . that is, the requirement that there be probable cause to believe the target is acting 'for or on behalf of a foreign power.''' So this is supposed to be about people acting in connection with a foreign power. S. 113, as currently drafted, simply eliminates that safeguard.

Even if S. 113 survived constitutional challenge, it would mean that non-U.S. persons could have either electronic surveillance and searches authorized against them using the lesser standards of FISA, even though there is no conceivable foreign intelligence aspect to their case. S. 113 will then likely result in a dramatic increase in the use of FISA warrants in situations that do not justify such extraordinary Government power.

I think Senator FEINSTEIN's amendment is a thoughtful and reasonable alternative to make sure that FISA can be used against a lone wolf terrorist, which I commend the Senator from Arizona and the Senator from New York for trying to address. But at the same time her amendment means we can do this without eliminating the important agent of a foreign power requirement. The amendment would create a permissive presumption that if there is probable cause to believe a non-U.S. person is engaged in or preparing to engage in international terrorism, the individual can be considered to be an agent of a foreign power even if the evidence of a connection to a foreign power is not clear. The use of a permissive presumption, rather than eliminating the foreign power requirement, maintains judicial oversight and review on a case-by-case basis on the question of whether the target of the surveillance is an agent of a foreign power. The permissive presumption would permit the FISA judge to decide, in a given case, if the Government has gone too far in requesting a FISA warrant.

I want to be clear about one point that apparently came up this morning. I understand the Senator from Arizona argued this morning that this amendment would weaken or impact on the FISA law as a whole. That is just not true. This amendment applies only to the changes made in the bill to address the lone wolf problem. It is a narrow, carefully drafted, very important amendment to this bill.

Any concern that the FISA judges would not use their discretion wisely is, I think—as the Senator from California pointed out—misplaced. What is the reason for any concern whatsoever about the proper use of this provision by judges? In the 23 years that the FISA court has been reviewing FISA applications, they have only declined to issue the warrant on one occasion. In that case, the decision of the court was reversed on appeal. The FISA judges clearly take their responsibility seriously and execute it carefully. The experience of the last two decades shows we can trust them not to the deny FISA applications too hastily. We should also be able to trust them enough to maintain their power to serve as a reasonable check on Government overreaching.

We are told that one of the inspirations for this bill was the case of Zacarias Moussaoui, the alleged 20th hijacker. One of the FBI's excuses for not seeking a warrant to search Mr. Moussaoui's computer prior to September 11 was that they could not identify a foreign power or group with which Moussaoui was associated. In other words, they could not meet the agent of a foreign power requirement to get a FISA warrant. In the case of Moussaoui, a warrant application was never even submitted to the FISA court.

As Senator SPECTER pointed out, many legal observers think the FBI simply misread the law, and it could and should have obtained a FISA warrant against Mr. Moussaoui if it had tried.

No matter, in any event, Senator FEINSTEIN's amendment would fix the so-called Moussaoui problem just as well as the current bill. The permissive presumption would still ensure that future investigators do not need to show specific evidence of a particular foreign power or group for which the individual was an agent if they have other good evidence that the subject is preparing to engage in international terrorism, as they did in Moussaoui's case, but have not been able to identify the specific agent of a foreign power.

At the same time, Senator FEINSTEIN's formulation would put some limit on the Government's ability to use this new power to dramatically extend FISA's reach. If the Government comes to a conclusion that an individual is truly acting on his or her own, then our criminal laws concerning when electronic surveillance and searches can be used, in my view, and I think in the view of many, are more than sufficient. True lone wolves can and should be investigated and prosecuted in our criminal justice system.

Under this amendment, the FISA court could presume that any non-U.S. person preparing to engage in international terrorism is an agent of a foreign power. At the time of the initial warrant application, and perhaps even later, this presumption makes sense. It is somewhat difficult to envision a foreigner in the United States planning an international terrorist attack who is not an agent of a foreign power, which includes a terrorist organization. But one can envision a situation where, at the time of a request for a reauthorization, a FISA warrant is made, the Government has now determined that the suspect is truly a lone wolf.

In those situations where the person is simply a lone wolf in every sense of the word and is not connected with a foreign power or terrorist organization, FISA should not apply. The Government should then use all the tools of the criminal process because—and this is the key issue—in that circumstance, the foreign intelligence rationale, the entire basis for the creation of a FISA law, that entire rationale for FISA's lesser standard no longer exists.

Senator FEINSTEIN's amendment retains FISA's agent of a foreign power requirement, maintains the independence of the FISA court, and preserves judicial oversight of the abuse of the new power. It protects national security by addressing the lone wolf problem, and it does not threaten the constitutional freedoms we cherish.

I am grateful to the Senator from California for her leadership role on this important amendment. I strongly urge my colleagues to support this reasonable amendment that will simply make this a much better bill and, frankly, a bill that would cause many of us to feel comfortable supporting the bill.

I urge my colleagues who are proponents of this bill to consider how important it is that we have as many Senators as possible support such a bill. This goes right to the heart of the question of whether in times of crisis this Nation is going to get the balance right between civil liberties and our Constitution and the important paramount issue of fighting terrorism. We need as many people supporting this to send a message to the American people that we are getting this right. The Feinstein amendment is a reasonable, modest attempt to achieve that kind of consensus. I urge my colleagues to support it.

I thank the Chair. I yield the floor.

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

Mr. SCHUMER. I thank the Chair.

Mr. President, I rise in reluctant, but considered, opposition to the amendment of my good friend from California. I thank her and the Senator from Wisconsin for their roles in this area. My colleague from California and I usually share many of the same views on law enforcement issues, and we work closely together. I say usually, it is the other way around. I am on one side, and she is trying to put together the compromise. Now she is trying to put another compromise together. I respect her for that.

I say to the Senator from California and the Senator from Wisconsin, who is a devout believer in the freedom and liberty this country cherishes and a constant watchdog on our committee, I have great respect for both of them. This is a good debate because in our brave new post-9/11 world, we have to balance liberty and security and, obviously, some adjustments have to be made.

The Founding Fathers knew that in times of war, in times of crisis, security might gain a little. I do not think this is an issue of security versus liberty, though. I do think it is an issue of the new technologies that are available and allows individuals or small groups of individuals unknown before to do real damage to America. Then 10 years ago, you knew who was going to hurt you. It would be a nation. It would be an established group of terrorists. But today, any small group can pop up, even individuals, and do such damage. That is what has caused the Senator from Arizona and I to change the law.

I think the Feinstein amendment is well-intentioned, and honestly it recalibrates the balance in a little different way than I would. This is what the debate is about. My guess is, if Washington, Jefferson, or Madison were looking down on the Senate Chamber, they would want us to have this debate. It is a good thing we are having this debate. I appreciate it.

I am going to be brief. I know we want to deal with this amendment.

My objection to the amendment of the Senator from California is that it does leave discretion in the hands of the judge—the very purpose of the amendment. I do not think there ought to be discretion when there is probable cause that some individual or small group, whether they can be connected to a terrorist group, a known terrorist group, a terrorist organization or not—I do not think there should be discretion in getting that FISA warrant. Obviously, the judge will have discretion, so to speak, in determining if probable cause is there. So this is hardly a straitjacket, even the amendment we have proposed.

If the judge does not find probable cause to engage or prepare to engage in terrorist activity, there is not going to be a warrant.

The other point I want to stress, of course, and this matters to me—I know some in the civil liberties community say everyone who is dealing with American law should have the same rights. This does not affect citizens or those who hold green cards. I think it strikes a fair balance. The idea of giving the judge discretion, the so-called permissive presumption, in my judgment, goes too far.

One of the problems we had with the Moussaoui case was that the FBI was unsure that they could seek a warrant. They did not think the law allowed them to seek a warrant. That is what brought up our amendment.

With the Feinstein amendment, they would still not have that certainty. You also might get in the very same case a judge in California ruling one way and a judge in New York ruling another way. I do not think we want confusion, differing opinions, judicial discretion when clearly probable cause is met.

I realize that my good friend from California seeks an ability to check on the abuse of FISA. I agree with her. I argue this is the wrong way to do it. Again, if probable cause is established, it should not matter if it is a lone wolf or a known terrorist group or a known terrorist organization. To have different judges come to different conclusions about that I do not think helps move our law, move our safety, or, for that matter, further protect our liberties.

I urge my colleagues to vote against this amendment. It is well intentioned. It does seek to understand the balance between liberty and security, but it would do it in a way that I think is not advised, particularly in our post-9/11 world. I urge my colleagues to vote down the amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, first let me address Senator FEINGOLD. He is correct about the misstatement I made this morning. I do recall making this statement that the Feinstein amendment would apply generally to the section of law rather than just S. 113. The Senator from Wisconsin is correct. What I said was in error. It does not detract from my primary argument, but that is correct, and I appreciate him pointing that out.

I wish to respond to the three primary arguments we have heard. First

of all, Senator LEAHY primarily was making the point that we should see if the Patriot Act is working before we make the changes that Senator SCHUMER and I and others are trying to make.

First, I note that the vote in the Judiciary Committee was 16 to 0. It was unanimous. I appreciate the bipartisan support from people such as Senator LEAHY and would note that we have had that kind of bipartisan support from the very day that Senator—in fact, 2 years ago it was Schumer-Kyl, now it is Kyl-Schumer, for obvious reasons.

Secondly, this has nothing to do with the PATRIOT Act. The FISA law was put into effect in 1978, I believe it was. So this is a law that has been in effect for a long time. The problem with it is that a significant change has occurred on the international stage. As has been pointed out, the law was originally intended to deal with Soviet spies, foreign powers, or international terrorist organizations such as the Red Brigade, the Baader-Meinhof gang and people like that.

In that day, it was a tight-knit group of people who actually worked as a terrorist organization. But today, as the testimony before the Intelligence Committee went into in detail, it is now a worldwide Islamic jihadist movement. It is about a cause rather than an organization.

The FBI Director, whose testimony I read this morning, went into a great deal about how, therefore, the people who work in this international cause are very different from the old members of the gangs or the Soviet spy network, and to try to pigeon hole a FISA warrant against these individual people into the provisions of the law as it was originally drafted is really not possible. That is why the FBI would not go after a warrant for Zacarias Moussaoui. It is why Agent Rowley was very upset about it. But at the end of the day, headquarters was probably right not to try to make out the case that Zacarias Moussaoui was somehow connected to an international terrorist organization. They found some tenuous connections with some Chechen rebels but at the stage that the warrant was corrected they could never tie it into an international terrorist organization. We now know subsequent to the issuance of the warrant that there were some ties to al-Qaida, but he may be a good example of the lone-wolf terrorist.

So that is why times have changed. The law has to change to keep up with this. Otherwise, we would not be suggesting this rather modest change in the law.

The people against whom we are now directing our surveillance with respect to international terrorism are a very different group of people. Much of the time they do not act in concert and sometimes they enact as lone wolves.

That gets me to the next point. As I understand it, Senator FEINGOLD's primary argument is that we should have this kind of surveillance against agents of foreign powers, but that we should not have it against lone wolves. Of course, the Feinstein amendment provides a presumption that the lone wolf is an agent of a foreign power.

That is not our point. We are not trying to prove the lone wolf is an agent of a foreign power. I do not want to have a presumption in there that presumes something that we are not even alleging. Sometimes our U.S. Government is going to say, we do not have any reason to believe this person is connected to an international terrorist organization or a foreign power, country. We are not alleging that. We are alleging that he is a person engaged in or about to engage in a terrorist action, we have probable cause to believe that. That standard remains the same and, therefore, we want to, what, prosecute him? No, get a warrant to see what else he is doing.

So this amendment does not match up with what we are trying to do. We are not trying to prove that they are agents of a foreign power. We are providing the court with evidence that a non-U.S. person is engaging in or about to engage in activities involving terrorism against the United States and, therefore, the court is warranted in allowing us to investigate it further. We do not want the presumption because in many cases that is not what we are trying to prove.

The important point is a point I would like to make in response to Senator FEINGOLD and that is that there still has to be international terrorism involved. It is not as if we are going after people because we do not like their nationality or something of that sort. We are dealing with a very sophisticated court that is not a kangaroo court; it is the FISA court, and they have not turned down warrants because the Justice Department has been very careful to make sure they have all the evidence that is needed.

I will tell my great friend Senator FEINSTEIN and just make a footnote—I said it this morning but I will say it again—I cannot remember a time that she and I disagreed on a matter involving intelligence or law enforcement activities. It just does not happen except this one time. I guess the exception proves the rule. There is nobody in the Senate with whom I have enjoyed working more on these matters. Witness the fact that Senator FEINSTEIN and I have been the chairman and ranking member alternately of the Terrorism, Technology, and Homeland Security Subcommittee of the Judiciary Committee ever since I came to the Senate. It has been a wonderful relationship, and there is nobody in this body that I admire more.

So I want to answer this question very specifically, because if I understood one of her arguments, it was that we have changed the probable cause standard, and we have absolutely not done that. In fact, in response, I think to a suggestion of one of our Democratic colleagues, we had the language exactly tracked in the statute, and I will read it precisely. This is in 50 United States Code, section 1801, the definitions section under foreign power. I will not read the whole thing, but No. 4 is ''a group engaged in international terrorism or activities in preparation therefor.''

Then, under ''agent of foreign power''—and, remember, this is where we have the definition of a non-U.S. person. We had the third category. We tracked the language precisely—''engages in international terrorism or activities in preparation therefor.'' It is the exact same language.

So the probable cause standard remains identical. In very simple terms, this is what the U.S. attorney would have to say: Judge, here is my affidavit and what it says is that Joe Blow is a non-U.S. citizen. Here is the documentation for that, and here are the activities that we have probable cause to believe he is engaging in.

So it is the probable cause standard. What would satisfy that test? Let me be very precise in the order that I present this.

Under this section of definitions—and our bill is the same as S. 2568, which the Justice Department was referring to when it made this comment, someone who is involved in terrorist acts:

> That transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

This is quoting from 50 United States Code, section 1801(c)(3):

> As a result, a FISA warrant would still be limited to collecting foreign intelligence for the international responsibilities of the United States, and the duties of the Federal Government to the States in matters involving foreign terrorism.

That is quoting from a court case that interpreted the provision.

Therefore, according to the Justice Department, the same interests and considerations that support the constitutionality of FISA as it now stands would provide the constitutional justification for S. 2568, which is the predecessor to S. 113, which is the bill before us.

So the definition is the same, the probable cause standard is the same, and the nexus to international terrorism is the same. None of that changes. The only thing that changes is that we add non-U.S. person so you can get to the lone wolf and do not have to either assert that the person is involved with an international terrorist organization or foreign power or presume that the individual is, because that person may well not be.

Finally, Senator FEINSTEIN made the point that under proper circumstances, S. 113 would allow the search of a solo international terrorist and the answer is, yes, that is exactly what it would allow. And especially with today's

weapons, which allow even a solo terrorist to be able to cause enormous destruction, the FBI should be able to monitor such a terrorist if it can convince the court that probable cause exists that would otherwise be the standard in any kind of FISA warrant request.

I think those are the answers to the allegations that have been made in support of the Feinstein amendment. I think it gets right down to what Senator FEINGOLD said, which is that there is simply disagreement about whether the lone wolf should be the subject of this statute. Obviously, if the amendment were to be adopted, we have our purpose, which is to add the third category.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the distinguished Senator from Arizona for his personal comments. He knows I have thoroughly enjoyed working with him. It is unusual—as a matter of fact, I cannot remember in all these years when we have ever been on opposite sides of one of these questions.

Let me state to the Senator my great fear. We all forget beneath the surface this Government has tremendous power. When that power is exercised against a person in this country, alone as a visitor, has no rights, it is enormous what can happen. What my deep concern is that overzealous prosecutors will use this where they should use title III and get a criminal warrant instead of a FISA warrant because of the removal of the agent of the foreign power. We keep the connection with the basics of the FISA statute which is surveillance related to an agent of the foreign power. We keep that. That is the justification for FISA. We give the judge the ability to make that as a presumption—ergo, giving the judge some discretion not to make it, and therefore the individual seeks the warrant—an FBI agent or whoever it is—goes to title III and gets a criminal warrant.

Once you get a FISA warrant, the benefits from the law enforcement side of the FISA warrant are much greater than the title III warrant.

It is a small protection. I don't believe, in my heart of hearts—and if this were to pass and the Senator from Arizona showed me that it did in any way prevent the FISA court from exercising its discretion just as you want it to, I will change it. I would be the first one to come back.

It prevents this misuse of a prosecutor who should be getting a title III warrant, who will come to the FISA court instead because the FISA court will be a rubberstamp, and because myself, a visiting Indian, Pakistani, Muslim, Frenchman, Italian, anybody in Los Angeles who happens to have in their pocket a one-way ticket and maybe a pocket knife—a box cutter may be out of date—and somebody has a suspicion, they do not have to prove anything. And they can surveil me, they can wiretap me, they can exert all of the surveillance powers that are used under FISA. They do not know whether I am going to commit a criminal act and they have no evidence of anything else. That is what title III is for. Title III has a little heavier cause burden, but as the Senator said, there is probable cause in both.

But the benefits of the FISA warrant are superior to the benefits of the title III warrant in their duration. So you can do all this to somebody for 90 days instead of 30 days and you do not have to come back and renew the warrant once every year. That is my concern.

As I read your legislation, there is no discretion. That is the problem I have with it. This is such a slight change, it is kind of a little tweak that a judge can say, hey, now, let's wait and see what you are doing here.

If the Senator would like to respond, I am happy to yield.

Mr. KYL. If I could, the Senator from California has been talking about discretion, and I guess I begin by asking a question.

Does the Senator intend the presumption language would apply both to the definition of the individual as an agent of a foreign power and relative to the activities in which the individual is allegedly engaging?

Mrs. FEINSTEIN. The presumption would be that the target or the individual would be an agent of a foreign power. Otherwise, you could have this against the Unabomber, Oklahoma City. Of course, they are American citizens, so I understand that does not apply, but that same kind of situation.

Mr. KYL. There are two things the court will have to determine. First, that this is a warrant that should be issued, that there is probable cause the underlying crime is being committed or activities engaged in for the preparation of a crime. And second, it lies against a particular kind of person we are talking about. In regular title III court you do not have the second requirement, but in FISA court you have to prove the person is either an agent of a foreign power or foreign intelligence organization, and we are adding this third criteria.

So the court has to make a 100 percent determination in both of those matters. If the court cannot find any evidence in the affidavit that the individual is not a United States citizen, for example, the court would have no discretion and have to deny the warrant. But if the court found part of the warrant was satisfied, this person is clearly a non-United States citizen, then, number two is satisfied; go back to number one, which is the question, Do we have probable cause to believe the person is engaging in the kind of activities that the statute discusses here.

That is not necessarily a matter of discretion so much as it is a matter of a court weighing the affidavit presentation and determining whether it is sufficient to meet the probable cause standard.

Mrs. FEINSTEIN. What I don't understand is why you do not want to give the judge that small bit of discretion with a presumption. The judge can presume it. We both know the history and the history is 100 percent if you include the appeal of FISA judges in granting warrants. So there will not be a problem there.

I am concerned about the overreach. I am concerned about the misuse. And the only way we could figure to counter that was to keep the agent a foreign power, provide this presumption that a judge could use in that one case.

Senator, neither you nor Senator FEINGOLD nor I would ever know if there was an overreach. That is what makes this far more dangerous, the fact that it is so secret.

Mr. KYL. If I could respond to the last point.

The matter about which the court has some degree of discretion is in the way it weighs the affidavit presentation relative to the underlying predicate for the warrant, the activities that are being engaged in, the purchase of the ticket, the presence of box cutters, all that information. The court weighs all that. It is presented in the affidavit, and the court makes a decision. It is enough or it is not enough. To some extent, you can say that is discretion. It is really applying the evidence to the probable cause test, weighing it and determining whether the evidence meets the case. In any event, that is where the court has some leeway to decide.

Where the court does not have any leeway is to something that is either a fact or it is not. That is, Does this person qualify or not? That is to say, is the person an appropriate subject for the warrant or not?

If you were asserting, for example, that the individual was a member of the Baader-Meinhoff gang, there would have to be evidence in the affidavit that is clear enough for the court to reach that conclusion or the court would say, sorry, this person does not qualify for a FISA warrant. I cannot find enough evidence in here that he is a member of the Baader-Meinhoff gang or a spy for the Soviet Union.

But with respect to whether this person is a non-United States person, that is something that will either be fairly true or not. It is either going to be true or not. The court is either going to be faced with a situation where the evidence is overwhelmingly clear in the affidavit and the United States attorney says it is very clear this person is not a United States citizen, here is the evidence we have, and the court will say, I agree. Or the court will say, all you have done is assert that the person is a non-United States citizen. I don't have any basis to know that or not. Where is your evidence to know that he is a non-U.S. citizen? So I am not going to grant the warrant. But that is the basis on which the court is going to make that judgment.

The court is not going to say there is a provision here that says I can presume that this individual is an agent of a foreign power and therefore I can have some leeway here to decide whether or not the warrant lies against this individual. The Government is either going to assert that the person is an agent of a foreign power or not. If the Government is saying no, we don't think this person is working for some foreign power, we think he is working on his own or at least we don't have any evidence to suggest he is anything other than an international terrorist traveling all around the world training and picking up different things and so on, but he is a dangerous guy and here is the reason we believe he is dangerous, a presumption at this point doesn't get you anywhere.

The court has no direction to go in. If you say there is a presumption that he is an agent of a foreign power and the Government is not trying to prove he is acting for a foreign power, what has this definition gained us? There are situations in which the Government simply isn't going to allege that the person is an agent of a foreign power; it is only going to allege that he is a lone wolf, but look at all the bad things he has done or is doing. If they are sufficient to grant a warrant, if there is probable cause there, the court can do it. If the court says it is not quite sufficient yet, get some more information, then he will deny the warrant.

The PRESIDING OFFICER. Who yields time?

Mrs. FEINSTEIN. I will yield time, Mr. President, and I will be very happy to have Senator FEINGOLD in this.

I think this is really the kind of discussion that we should be having. I welcome the free flow.

If I knew a better way of solving the problem Senator KYL mentioned, I would do it. But my view and what Intelligence staff and others have said to me is that the way it is worded creates a rubberstamp out of a FISA judge, once you take out that agent of a foreign power connection. I guess the reason they believe that is that it puts them into the other side, the title III side.

If I could think of another way, I would. But it is one added guarantee against an overreach. You and I have both known zealous prosecutors. You and I have both known people who would misuse this. The question comes, How do we prevent misuse from happening?

I am happy to yield to Senator FEINGOLD.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I again thank the Senator from California for yielding time and for her leadership. I thank the Senator from Arizona. He is a person of great integrity, and the way he concedes if he didn't say something exactly perfectly this morning is an example of exactly the kind of relationship I have with him on these debates. They are good debates. I appreciate that.

It is also true the Senator from California and the Senator from Arizona almost always agree on these kinds of issues. They are one of the most formidable combinations here in the Senate, in a bipartisan combination. I take great pride in the bipartisan work I have had a chance to do with people such as the other Senator from Arizona and the Senators from Maine.

So I take my hat off to them for having done that. I have often been on the other side of their view, which is not easy because they are well prepared and they are very dedicated and they like to get things done.

I guess that is why I think this is kind of a significant moment, when Senator FEINSTEIN and I actually agree on a point, when the two of you so frequently agree. I think it is a sign that there is something that needs to be fixed in this bill.

It is modest, but it is very important. I remind the Senator from Arizona that I think I essentially said this: I voted for this in committee in the hope it would be fixed on the floor.

My goal here is not to kill this bill. I do know how to vote against bills I don't like. My goal is to fix it because I think there is a problem with this issue. That is where we are with this amendment. This is an attempt to fix this bill on a very important point without, in my view, doing any serious harm at all to the goal of the Senator from Arizona and the goal of the Senator from New York.

The way I understand this operates is that in these cases the FISA court is going to grant this warrant upfront, essentially every time in the first request, because there will be the evidence or the presumption that there is a problem.

Where this, the Feinstein amendment, has a real impact is where they come back later and they have to come back for a renewal. If after a couple of years there is just no evidence at all or virtually no sign at all that the original belief about what this guy was about to do isn't bearing any fruit at all, in that case, and only in that case, should this, in terms of our laws and our tradition, be returned to the regular criminal court—only in that circumstance.

In other words, yes, the Government was trying to protect the American people, as they should. They had a person here who they believed might have a connection to a foreign power or be connected to a terrorist organization. But it turns out after some period of time that it just didn't happen to be one of those cases where that was true.

It is still a person who intended, perhaps, to do something very wrong. It is still a person who should be prosecuted. But it is a person who deserves the protections of the laws of the United States—because I am sure the Senator from Arizona agrees with me, barring this unusual kind of circumstance that is the basis for the FISA law, everyone who commits a crime on our soil, whether an American citizen or not, is entitled to the protections of our Constitution and the Bill of Rights in a criminal proceeding.

The FISA law is only a narrow exception to that. So let's be very clear on the record. I do want to get at these lone wolves who may have some connection to international actors, such as foreign powers, or to terrorist organizations. As the Senator from California pointed out, if it is simply a person committing a bad act on our soil, a person who is not an American citizen, that is what our criminal courts are for. That is what title III is for. That is the foundation of our system.

This is really an incredibly narrow exception, a backstop, a safeguard to make sure that the good intentions of what this bill is all about don't go too far. That is what the Senator from California said, so that there is not overreaching.

I have just one other point about what the Senator from New York said. He seemed to be setting up a scenario where there might be a conflict between the FISA judges, almost as if there were different circuits like in the regular courts. That is not the way the FISA courts are set up. There are different FISA judges, but together they constitute the appeals courts. There would not be different areas of the country that would have different laws of this kind of thing that would present any kind of problem in terms of a conflict in the circuits. I don't think this argument holds up.

Let me return to the point. The Senator from California has been so careful in making sure this is just a safeguard down the line, when somebody has been identified as a potential lone wolf and it does not really pan out, that there is some discretion rather than a permanent warrant into perpetuity for eavesdropping on somebody who certainly maybe needs to be evesdropped upon, but for whom that authority should be obtained through the normal criminal procedure, not on the basis of a law that was crafted under the assumption that this is a foreign threat to our Nation.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Arizona.

Mr. KYL. Mr. President, first of all, I thank Senator FEINGOLD for the kind words he had for me and my colleague from Arizona, Senator MCCAIN. I just spoke with Senator FEINSTEIN.

I don't think either of us has a whole lot more to say here. I think Senator ROCKEFELLER may wish to speak and there may be others.

I urge anyone who would like to speak to this amendment to come to the floor and speak because otherwise I think we are getting close to the time when we could vote.

I inquire of the Chair, how much time remains on both sides on this amendment?

The PRESIDING OFFICER. The Senator from Arizona has 98 minutes remaining. The Senator from California has 68 minutes remaining.

Mr. KYL. I think there is a little time left on the debate time as well, but I am prepared to yield that back when we are done with this amendment, as would Senator SCHUMER.

We could either note the absence of a quorum and wait a few minutes for somebody else or I could yield the floor to someone?

Mrs. FEINSTEIN. Mr. President, I suggest the absence of a quorum. I know Senator ROCKEFELLER is on his way.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. FEINSTEIN. 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 West Virginia.

Mr. ROCKEFELLER. Mr. President, I thank the distinguished Presiding Officer. I thank the Senator from California whose amendment to S. 113 I rise to support. I am a cosponsor of her amendment.

We live in a time in which we can never feel completely safe. There are terrorists throughout the world and here at home who have sworn to kill Americans. That is what they are trained to do. That is what they want to do. That is what they plan to do. We fight a war knowing that it may increase the terrorist threat against us. We buy duct tape and plastic sheeting. We plan escape routes for our families. We make decisions about whether to go to public events or ride a subway, or do all kinds of things. Does it change our lives or not? We are not even sure of that yet.

In times such as this, we in Congress have a special responsibility. We must be vigilant in our lawmaking and our oversight to make certain that the executive branch, our intelligence, and law enforcement agencies have all the legitimate tools to do their jobs in an efficient and effective way.

But our responsibility does not end there. It is easy to write laws to remove obstacles to prevent the Government from obtaining information. We have done that. Our challenge is to write laws that strengthen our security without undermining privacy and liberty. This is something our Nation has never faced before in the way which it is now going to be facing for the next several years.

It is our responsibility to look very closely at every piece of legislation related to fighting terrorism and ask: Do we need it? Does it make us feel safer? Yes. But do we really need it? Does it accomplish the goals we are seeking? And does it go too far?

I have cosponsored the Feinstein substitute amendment to S. 113 because I believe the language of the substitute is crafted carefully—very carefully—to accomplish our goals in the fight against terrorism without going too far.

Mr. President, I would like to explain why I believe that.

The Foreign Intelligence Surveillance Act of 1978 was designed to regulate the collection of foreign intelligence inside the United States using electronic wiretaps. Later, physical searches were added to the law.

Before FISA, the Foreign Intelligence Surveillance Act, the executive branch ran wiretaps for national security purposes without judicial review, without approval of any sort. Such wiretaps were potentially unconstitutional and, because of that, threatened the viability of espionage prosecutions and raised serious questions regarding civil liberties.

The Congress enacted FISA with the recognition that our national security required the collection of foreign intelligence in the United States through intrusive means under different circumstances and using different standards than in the criminal warrant context, and the courts have upheld the constitutionality of FISA.

The purpose of FISA is the collection of foreign intelligence. The standard used to distinguish between FISA collection and wiretaps related to criminal activity involves a determination that the target is a ''foreign power'' or linked to a ''foreign power.'' In the case of terrorists, the Government must show the target is an ''agent of a foreign power,'' a terrorist group operating overseas.

Both S. 113 and the Feinstein substitute address and solve the following problem: What if you have a non-U.S. person in the United States who is engaging in or preparing to engage in international terrorist activities, but the Government does not have enough evidence to link him to an overseas group?

Both S. 113 and the Feinstein substitute eliminate the requirement that the Government produce to the FISA court evidence showing a direct link between the target and a foreign terrorist group.

So why is the Feinstein substitute better?

Under S. 113, the Kyl-Schumer bill, a key principle of FISA is eliminated. Even if the Government has actual evidence that the target is not connected to a foreign terrorist group, under Kyl-Schumer, the Government can still get a FISA wiretap order. This simply goes too far, and it is not necessary, in the judgment of this Senator.

If we know for certain a person really has no foreign connections, if he or she is a true ''lone wolf''—a foreign ''Unabomber,'' for example—then it is a straightforward criminal investigation. There is no foreign intelligence to be gotten at all, and that person is not a valid target under FISA.

The Feinstein substitute gets the Government everything it wants without changing FISA in a way that damages its basic premise; to wit, FISA is for the collection of foreign intelligence and should not be used when the only objective at hand is the collection of criminal evidence.

Mr. President, I commend the carefully crafted solution offered by the Senator from California to a very difficult problem. As the vice chairman of the Intelligence Committee, I am proud to cosponsor this amendment, and I urge my colleagues to vote for it.

I thank the Presiding Officer and yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, first, I ask unanimous consent to have printed in the RECORD a letter dated April 30, 2003, to Chairman ORRIN HATCH from the Department of Justice relative to this legislation, and specifically an analysis of the amendment proposed by Senator FEINSTEIN on pages 5 and 6.

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

DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, April 30, 2003.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the Administration's views on various proposed amendments to S. 113, a bill that would amend the Foreign Intelligence Surveillance Act of 1978 to permit electronic surveillance and physical searches of so-called ''lone wolf'' international terrorists—i.e., non-United States persons who engage in international terrorism or activities in preparation therefor without any demonstrable affiliation with an international terrorist group or other foreign power. On March 5, 2003, the Administration sent a letter indicating its support for S. 113 (copy attached). The Administration, however, is greatly concerned that this important FISA amendment would be subject to a sunset provision included in the USA PATRIOT Act of 2001. The Administration opposes the sunset language, and looks forward to working with Congress to ensure that this FISA amendment and those other portions of the USA PATRIOT Act subject to the sunset provision are addressed at the appropriate time. For reasons set forth below, we oppose the proposed amendments to S. 113. In particular, the Administration is concerned that the proposed amendments would weaken the FISA as an important instrument in the arsenal of the United States Government in combating terrorism and the espionage activities of foreign powers.

Authority of the FISC and FISCR. The first proposed amendment to S. 113, entitled ''Sec. 2. Additional Improvements to Foreign Intelligence Surveillance Act of 1978,'' would add a provision to 50 U.S.C. §1803 to grant the Foreign Intelligence Surveillance Court (''FISC'') authority to ''establish such rules and procedures, and take such actions, as are reasonably necessary to administer their responsibilities under this Act.'' The Administration opposes this grant of authority to a court that has an extremely limited statutory function of approving or disapproving applications made by the Government of orders with respect to electronic surveillance and search. Granting rulemaking authority by statute to the FISC and the FISCR—courts that operate in secret and that are of

very limited jurisdiction that is specified in detail in the FISA—is inappropriate.

Reporting Requirements. A second group of related amendments would require additional reporting concerning the use of FISA. Each is objectionable for reasons discussed below.

a. The first reporting amendment would require public disclosure of the number of United States persons targeted under various provisions of FISA. Under current law, the Department publicly reports the annual aggregate number of FISA searches and surveillances, but does not disclose publicly how many of those searches and surveillances involved United States persons. See 50 U.S.C. §§1807, 1826. The proposal also would require public disclosure of the number of times the Attorney General authorized the use of FISA information in a criminal proceeding—a statistic that currently is reported to the Intelligence Committees as part of a longstanding, carefully constructed, and balanced accommodation between the Executive and Legislative branches and in accordance with the FISA itself. See 50 U.S.C. §1808(a)(2)(A). Finally, the provision would require disclosure of portions of FISA pleadings and orders that deal with significant questions of law (not including discussion of facts) ''in a manner consistent with the protection of the national security of the United States.'' Each of these three reporting requirements is addressed below.

We oppose a requirement to disclose publicly the number of FISA targets that are United States persons. Congress has in the past considered and rejected proposals to require disclosure of this information to the general public rather than to the Intelligence Committees. In 1984, the Senate Select Committee on Intelligence was ''asked by the American Civil Liberties Union to consider making public the number of U.S. persons who have been FISA surveillance targets.'' S. Rep. No. 98–660, 98th Cong., 2d Sess. 25 (1984). The Committee rejected that proposal because ''the benefits of such disclosure for public understanding of FISA's impact would [not] outweigh the damage to FBI foreign counterintelligence capabilities that can reasonably by expected to result.'' Ibid. As the Committee explained, ''[a]ny specific or approximate figure would provide significant information about the extent of the FBI's knowledge of the existence of hostile foreign intelligence agents in this country. As in other areas of intelligence oversight, the Committee must attempt to strike a proper balance between the need for public accountability and the secrecy required for effective intelligence operations.'' Ibid. This analysis is at least as applicable to foreign terrorist organizations today as for foreign intelligence organizations and the Administration continues to support the balance that was struck in 1978 and reaffirmed in 1984.

We also oppose a requirement to disclose publicly the number of times the Attorney General has authorized the disclosure of FISA information for law enforcement purposes. This provision is problematic primarily because it is not confined to cases in which FISA information is actually used in a proceeding. Revealing the number of Attorney General authorizations for such use—as opposed to the use itself—is troubling because that information could involve classified and non-public matters with ongoing operational significance—e.g., an investigation that has not yet resulted in a public indictment or trial, or in which no indictment or trial ever will occur. Thus, these numbers potentially could reveal information about the Department's classified, operational efforts to protect against the activities of foreign spies and terrorists.

Finally, we believe that the disclosure of FISA pleadings and orders that deal with significant questions of law is inherently inconsistent with ''the protection of the national security of the United States.'' Virtually the entirety of each application to the FISC discusses the facts, techniques, or pleading of highly classified FISA operations. As we noted in our letter of August 6, 2002, on predecessor legislation in the 107th Congress, ''[a]n interpretation by the FISC of the applicability of FISA to a technique or circumstance, no matter how conceptually drawn, could provide our adversaries with clues to relative safe harbors from the reach of FISA.'' A copy of our earlier letter is attached for your convenience.

b. A separate but similar proposal, entitled ''Sec. 2. Public Reporting Requirements Under the Foreign Intelligence Surveillance Act of 1978'' and proposed by Senator Feingold, also would impose public reporting obligations. Instead of requiring the Department to report the number of FISA targets who are United States persons, it would require reporting of the number who are not United States persons, broken out by the type of FISA activity involved—e.g., electronic surveillance and physical search. This proposal also would require the Department to identify individuals who ''acted wholly alone.'' Like the proposal discussed above, this proposal would require the Department to report the number of times the Attorney General authorized the use of FISA information in a criminal proceeding, and portions of FISA pleadings and orders that deal with significant questions of law ''in a manner consistent with the protection of the national security of the United States.'' The objections set forth above apply equally to this proposal.

c. Finally, a very recent reporting proposal, also proposed by Senator Feingold, would require an annual report on FISA to the Intelligence and Judiciary Committees. The report would include the classified statistical information described above—including numbers of non-U.S. persons targeted under each major provision of FISA—and would also require submission of portions of FISA pleadings and court orders. For reasons stated above and in our letter of August 6, 2002, we continue to oppose any requirement to submit portions of FISA pleadings and orders. More broadly, we strongly oppose the amendment because it threatens to upset the delicate balance between the Executive and Legislative Branches of government in the area of intelligence and intelligence-related oversight and reporting.

The FISA statute prescribes the types of information that must routinely be provided to the Judiciary Committees. Under current law, the Department of Justice provides to the Judiciary Committees and makes public ''the total number of applications made for orders and extensions of orders'' approving electronic surveillance and physical searches under FISA, and ''the total number of such orders and extensions either granted, modified, or denied.'' 50 U.S.C. §1807; see 50 U.S.C. §1826; 50 U.S.C. §1846 (similar reporting requirement for numbers of pen-trap applications and orders); 50 U.S.C. §1862 (similar reporting requirement for numbers of applications and orders for tangible things). The Department has, of course, consistently met these statutory requirements.

The FISA reporting obligations concerning the Intelligence Committees are much broader. Under 50 U.S.C. §1808, the Attorney General must ''fully inform'' the House and Senate Intelligence Committees ''concerning all electronic surveillance'' conducted under FISA, and under 50 U.S.C. §1826 he must do so ''concerning all physical searches'' conducted under the statute. In keeping with this standard, the Department submits extremely lengthy and detailed semi-annual reports to the Intelligence Committees, including specific information on ''each criminal case in which information acquired [from a FISA electronic surveillance] has been authorized for use at trial,'' 50 U.S.C. §1808(a)(2)(B), and ''the number of physical searches which involved searches of the residences, offices, or personal property of United States persons,'' 50 U.S.C. §1826(3). The reports also review significant legal and operational developments that have occurred during the previous six months. These classified reports are painstakingly prepared in the Justice Department and are obviously, from the questions and comments they generate, closely scrutinized by the Intelligence Committees. See generally S. Res. No. 400, 94th Cong., 2d Sess. (1976); H.R. Res. No. 658, 95th Cong., 1st Sess. (1977).

The ''fully inform'' standard that governs Intelligence Committee oversight of FISA is the same standard that governs Congressional oversight of the Intelligence Community in general. See S. Rep. No. 95–604, 95th Cong., 1st Sess. 60–61 (1977); S. Rep. No. 95–701, 95th Cong., 2d Sess. 67–68 (1978); see also H.R. Rep. No. 95–1283, Pt. 1, 95th Cong., 2d Sess. 96 (1978). The requirement to ''fully inform'' the Intelligence Committees, rather than Congress as a whole, is consistent with the long-standing legal framework and historical practice for Intelligence Community reporting to, and oversight by, Congress on matters relating to intelligence and intelligence-related activities of the United States government. Consistent with the President's constitutional authority to protect national security information, Congress and the President established reporting and oversight procedures that balance Congress' oversight responsibility with the need to restrict access to sensitive information regarding intelligence sources and methods. The delicate compromise—embodied in FISA and more generally in Title V of the National Security Act of 1947, 50 U.S.C. §§413–415, and based on the preexisting practice of providing only the intelligence committees with sensitive information regarding intelligence operations—established procedures for keeping Congress ''fully and currently informed'' of intelligence and intelligence-related activities. Under these procedures, the Intelligence Community provides general, substantive, and, often, classified finished intelligence information to several committees of Congress, but generally provides classified operational information only to the Intelligence committees. Even with regard to the Intelligence Committees, the Director of Central Intelligence and the heads of other intelligence agencies are, under Title V, to provide such information only ''to the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters. 50 U.S.C. §§413a(a), 413b(b).

Senator Feingold's reporting proposals would, in sum, distort and damage the effective, longstanding accommodation between the President and Congress, and between the Intelligence and Judiciary Committees, over the handling of classified operational intelligence information within Congress. It is noteworthy that the current leadership of both the House and Senate Judiciary Committees have expressed their approval of the existing accommodation. In a press release dated October 17, 2002, the Chairman of the House Judiciary Committee stated that the existing accommodation provides for ''reasonable, limited access, subject to appropriate security procedures, to FISA information through [the House Intelligence Committee].'' In addition, your letter of February 27, 2003, to Senators Leahy, Grassley

and Specter on FISA matters stated that the existing congressional oversight standards relating to FISA reflect a ''careful balance between the need for meaningful oversight and the need for secrecy and information security in the government's efforts to protect this country from foreign enemies.'' Moreover, you stated that your years of service on both the Senate Judiciary Committee and the Senate Select Committee on Intelligence have led you to conclude that the existing accommodation allows Congress to exercise ''appropriate, vigorous, robust and detailed oversight of the FISA process.''

Reporting on National Security Letters. The next proposed amendment to S. 113, entitled ''Sec. 3. Improvement of Congressional Oversight of Surveillance Activities,'' would require additional reporting specifically addressing the use of 18 U.S.C. §2709(e) in the context of requests made to schools and public libraries. We are concerned that a reporting requirement at this level of formality and specificity would unduly increase the risk of public exposure of the information, thereby jeopardizing our counterintelligence and counterterrorism efforts.

Presumption. Another proposal is presumably intended as a substitute for S. 113 and would create a ''presumption that certain non-United States persons engaging in international terrorism are agents of foreign powers for purposes of the Foreign Intelligence Surveillance Act of 1978.'' Under the proposal, the FISC would be instructed that it ''may presume'' that a non-United States person engaged in international terrorism or activities in preparation therefor ''is an agent of a foreign power'' as defined in FISA.

By providing that the FISC ''may presume'' the target is acting for or on behalf of an international terrorist group, the proposal would confer discretion on the FISC without any standards to guide the exercise of that discretion. Accordingly, the effect of the proposal is uncertain. It is conceivable that the FISC (or a reviewing court) would indulge the presumption only where the Government had established probable cause or something near to probable cause that the target in fact was working for or on behalf of a terrorist group. In that event, the proposal would be useless or nearly useless. The unpredictability inherent in the proposal also would significantly reduce its value even if, in the end, the FISC and later courts interpreted it more expansively in any particular case.

Nor do we believe that there is a reason to use a presumption—even a mandatory presumption—instead of the straightforward approach of S. 113 itself. In particular, we see no constitutional benefit likely to arise from the use of a presumption. Our letter of July 31, 2002 (copy attached), which explained the constitutionality of an earlier version of S. 113 (which would have made a lone-wolf terrorist a ''foreign power'' rather than an ''agent of a foreign power'') applies equally to the current version of S. 113. We do not believe that the use of a presumption significantly changes the constitutional analysis, nor adds any significant protection to civil liberties, except to the extent that the presumption is read narrowly to mirror current law, in which case the presumption is of little or no value for reasons explained in the previous paragraph.

Discovery. The next proposal would change the standards governing discovery of FISA materials in suppression litigation arising from the use of FISA information in a legal proceeding such as a criminal trial. We strongly object to this proposal. The proposal could harm the national security by inhibiting cooperation between intelligence and law enforcement efforts to stop foreign spies and terrorists. It could deter the Government from using information obtained or derived from FISA in any proceeding—civil, criminal, immigration, administrative, or even internal Executive branch proceedings. These overwhelming and potentially catastrophic costs would be incurred for very little benefit, because current law amply protects individual rights.

It may be helpful to begin by reviewing current law in this area and the ways in which it protects individual rights. Currently, FISA requires high-level approval from the Executive and Judicial branches before the Government conducts a search or surveillance. Each FISA application must contain a certification signed individually and personally by the Director of the FBI (or another high-ranking official accountable to the President) and must be individually and personally approved by the Attorney General or the Deputy Attorney General. 50 U.S.C. §§1804(a), 1823(a), 1801(g). Under the statute, the Government must apply to a judge of the FISC for approval before conducting electronic surveillance or physical searches of foreign powers or agents of foreign powers inside the United States. 50 U.S.C. §§1804–1805 (electronic surveillance), 1823–1824 (physical searches). Judges of the FISC are selected by the Chief Justice from among the judges on United States District Courts, who as United States district judges are protected by Article III of the Constitution. 50 U.S.C. §§1803(a), 1822(c).

A second round of judicial review occurs before the Government may use FISA information in any proceeding. The Government must provide notice to the FISA target or other person whose communications were intercepted or whose property was searched before using any information obtained or derived from the surveillance or search in any proceeding against that person ''before any court, department, officer, agency, regulatory body, or other authority of the United States.'' 50 U.S.C. §§1806(c), 1825(d). After receiving notice, the person may file a motion to suppress in a United States District Court and may seek discovery of the FISA applications filed by the Government and the authorization orders issued by the FISC. 50 U.S.C. §§1806(e)–(f), 1825(f)(g). Discovery may be granted freely unless the Attorney General personally files an affidavit under oath asserting that discovery would harm the national security. If the Attorney General files such an affidavit, as he has in every case litigated to date, the district judge must review the FISA application and order in camera, without granting discovery, unless ''disclosure is necessary to make an accurate determination of the legality'' of the search or surveillance. 50 U.S.C. §§1806(f), 1825(g). If discovery is granted, the court must impose ''appropriate security procedures and protective orders.'' Ibid. No court has ever ordered disclosure.

Congress established this standard for discovery after extensive and careful deliberation in 1978. See H.R. Rep. No. 1283, Part I, 95th Cong., 2d Sess. 90 (1978) (hereinafter House Report); S. Rep. No. 604, 95th Cong., 1st Sess. 57–59 (1977) (hereinafter Senate Judiciary Report); S. Rep. No. 701, 95th Cong., 2d Sess. 62–65 (1978) (hereinafter Senate Intelligence Report). As the 1978 conference report on FISA explains, ''an in camera and ex parte proceeding is appropriate for determining the lawfulness of electronic surveillance in both criminal and civil cases . . . [and] the standard for disclosure . . . adequately protects the rights of the aggrieved person.'' H.R. Rep. No. 1720, 95th Cong., 2d Sess. 32 (1978) (hereinafter Conference Report). As the Senate Judiciary Committee explained in 1978: ''The Committee views the procedures set forth in this subsection as striking a reasonable balance between an entirely in camera proceeding which might adversely affect the defendants's ability to defend himself, and mandatory disclosure, which might occasionally result in the wholesale revelation of sensitive foreign intelligence information.'' Senate Judiciary Report at 58.

The proposal would replace FISA's current standard with a new one under which discovery is required unless it ''would not assist in determining any legal or factual issue'' in the litigation. The ''would not assist'' standard is inappropriate for use in FISA, in particular, because it is lower than the standard for disclosure of informants' names in ordinary criminal cases. That standard at least requires a balancing of the public interest in confidentiality against the individual defendant's interest in disclosure. As the Supreme Court explained in McCray v. Illinois, 386 U.S. 300, 311 (1967), extending its earlier decision in Roviaro v. United States, 353 U.S. 53, 60–61 (1957), ''this Court was unwilling to impose any absolute rule requiring disclosure of an informer's identity even in formulating evidentiary rules for federal criminal trials [in Roviaro]. Much less has the Court ever approached the formulation of a federal evidentiary rule of compulsory disclosure where the issue is the preliminary one of probable cause.'' Indeed, the ''would not assist'' standard is lower even than the standards that govem various civil privileges, all of which require some kind of balancing of the interests in disclosure against the interests in confidentiality. See, e.g., In re Sealed Case, 121 F.3d 729, 738 (D.C. Cir. 1997). In effect, the ''would not assist''' standard is the appropriate standard for discovery of unclassified and non-privileged information, because no discovery of any kind is justified unless it would assist the litigation.

The ''would not assist'' standard could have very dangerous consequences for the national security. At the outset, we are concerned that the standard could lead to discovery being granted in nearly every case, because it is extremely hard to prove the negative fact that disclosure ''would not assist'' in any way. Such routine disclosure could be catastrophic: FISC applications contain some of the Government's most sensitive national security information, including information concerning human intelligence sources, sophisticated technical collection methods, and the details of ongoing investigations. Given the enormous sensitivity of that information and the details of ongoing investigations. Given the enormous sensitivity of that information, when the Attorney General personally files an affidavit under oath asserting that disclosure would harm the national security, ordering disclosure unless it ''would not assist'' in any way is inappropriate. In view of the protections in FISC and the requirement of an affidavit filed personally by the Attorney General, the ''necessary'' standard of current law should be retained.

Indeed, precisely because it may lead to discovery in virtually every case, the proposal would create an incentive for the Government to withhold sensitive information from its FISC applications. Under the ''would not assist'' standard, the Government might have to choose between excluding sensitive information from an application and risking a denial of search and surveillance authority from the FISC, or including the sensitive information and risking public disclosure of that information. Thus, the proposal could fundamentally alter the relationship between the Government and the FISC and could eviscerate the significance of the FISC's careful information security procedures, which are designed to give the Government confidence that full disclosure to the FISC will not result in a compromise of sensitive information.

Since the Government can never completely sanitize a FISC application, the ''would not assist'' standard would also create strong incentives to avoid suppression litigation and the expanded risk of discovery. That means the Government would lean away from prosecution of a FISC target, even where that was the best way to protect the country. It would thereby reduce the Government's ability to keep the country safe, distorting the vital tactical judgments that must be made. Indeed, the proposal would inhibit more than just prosecutions. In keeping with the scope of FISC's suppression remedy, the proposal would limit the use of FISC information in any proceeding, including immigration proceedings, or even in intemal adjudications of security clearances under Executive Order 12968. Here again the Government would face a difficult choice between using FISC information to protect national security and risking disclosure of the information as the cost of doing so.

We appreciate your continuing leadership in ensuring that the Department of Justice and other Federal agencies have the authority they need to combat terrorism effectively. Please do not hesitate to contact me if I can be of further assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

JAMIE E. BROWN,
Acting Assistant Attorney General.

Mr. HATCH. Mr. President, I rise in opposition to Senator FEINSTEIN's amendment. While I appreciate the efforts by Senator FEINSTEIN to draft a fix to the lone wolf terrorist problem under the Foreign Intelligence Surveillance Act of 1978, referred to as ''FISA'', the amendment simply will not do the job and will continue to expose our country to great national security risks. I will not and cannot accept such risks.

Let me be more specific as to my concerns. First, as drafted, the amendment would create only a permissive presumption to authorize a court to approve a Foreign Intelligence Surveillance Act, ''FISA'', application when presented with a lone wolf situation. As drafted, the proposal would provide only that the court ''may'' find the existence of a ''presumption'' that a non-U.S. person engaged in sabotage or international terrorism is an agent of a foreign power under FISA.

A permissive presumption creates a significant risk that the FISA court may not be authorized—or may feel constrained to exercise its discretion—to approve a FISA application when presented with a lone wolf terrorist who would otherwise be covered by the Kyl-Schumer-Biden-DeWine approach.

Second, the amendment does not clearly delineate how a permissive presumption would be applied by the FISA court. Assuming that the FISA court exercises its discretion and makes a finding that the presumption applies, the FISA court would then have to consider additional evidence in order to grant the application.

The amendment does not specify beyond the permissive presumption what specific evidence or what other findings would have to be made in order for the FISA court to approve the application.

In sum, by injecting a significant level of uncertainty into the FISA process, the amendment simply creates or even exacerbates the problem which it is intended to fix. We simply cannot take such a risk given the potential devastating consequences posed by the lone wolf terrorist.

I would note here that in a letter dated April 30, 2003, the administration opposed this proposal, citing the fact that the effect of the proposal was unclear and that the proposal did not provide any standards to the FISA court to guide the exercise or its discretion.

In contrast, the Kyl-Schumer-Biden-DeWine proposal creates clear definitions and would minimize uncertainty in an area where ambiguity could have devastating consequences—that is, where we are in danger of a terrorist attack by a lone wolf.

For these reasons, I oppose the Feinstein amendment and urge my colleagues to vote against the Feinstein amendment.

I yield the floor.

Mr. KYL. Mr. President, the proponents of the bill urge our colleagues to vote against the Feinstein amendment. And from our perspective, I think we are ready to have that vote.

I ask Senator FEINSTEIN if she is ready, as well?

Mrs. FEINSTEIN. Through the Chair, I think we can yield back the remainder of our time, I say to the Senator, and hold the vote, if everybody so desires.

Mr. KYL. Mr. President, I yield back the remainder of my time on both the amendment and on the bill itself.

The PRESIDING OFFICER. All time has been yielded back.

The question is on agreeing to amendment No. 537.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Alaska, (Ms. MURKOWSKI) is necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware (Mr. BIDEN) would vote ''no.''

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''aye.''

The result was announced—yeas 35, nays 59, as follows:

[Rollcall Vote No. 145 Leg.]

YEAS—35

Akaka	Durbin	Murray
Baucus	Edwards	Nelson (FL)
Bayh	Feingold	Nelson (NE)
Bingaman	Feinstein	Pryor
Boxer	Harkin	Reed
Byrd	Hollings	Reid
Cantwell	Jeffords	Rockefeller
Clinton	Johnson	Sarbanes
Corzine	Lautenberg	Stabenow
Daschle	Leahy	Sununu
Dayton	Levin	Wyden
Dodd	Mikulski	

NAYS—59

Alexander	DeWine	Lott
Allard	Dole	Lugar
Allen	Domenici	McCain
Bennett	Dorgan	McConnell
Bond	Ensign	Miller
Breaux	Enzi	Nickles
Brownback	Fitzgerald	Roberts
Bunning	Frist	Santorum
Burns	Graham (SC)	Schumer
Campbell	Grassley	Sessions
Carper	Gregg	Shelby
Chafee	Hagel	Smith
Chambliss	Hatch	Snowe
Cochran	Hutchison	Specter
Coleman	Inhofe	Stevens
Collins	Inouye	Talent
Conrad	Kohl	Thomas
Cornyn	Kyl	Voinovich
Craig	Landrieu	Warner
Crapo	Lincoln	

NOT VOTING—6

Biden	Kennedy	Lieberman
Graham (FL)	Kerry	Murkowski

The amendment (No. 537) was rejected.

Mr. BIDEN. Mr. President, I am pleased to support final passage of S. 113, a bill to amend the Foreign Intelligence Surveillance Act, FISA, to provide needed tools to detect and combat terrorists bent on attacking this Nation and killing our citizens. First, let me commend my colleagues, Senators KYL and SCHUMER, for their relentless efforts in bringing this important issue to the floor of the U.S. Senate. Since the tragic events of September 11, all of us have tried to turn a critical eye toward our laws and the workings of government to discern how we might avert such a dreadful attack in the future. That attempt to fix what may be wrong with our existing system of intelligence-gathering and law enforcement is perhaps the greatest tribute we can offer to the victims of that fateful day and their families.

This bill, as amended, is a good example of how we can make basic, common-sense changes to existing law that will have a tremendous impact on our fight against terrorism. I was proud to be one of the authors of FISA in 1978. We worked long and hard to strike the right balance between protecting civil liberties on the one hand and deterring terrorist acts on the other. Since FISA permits the physical and electronic surveillance of suspected foreign agents, in some instances under a more generous standard than that allowed in Title III surveillances, an amendment to FISA should be carefully tailored to maintain its careful balance. I do not take lightly amending FISA, but believe that this bill does so in a manner that is both constitutional and narrowly tailored.

I want to thank the sponsors of this legislation for their willingness to work with me to improve their original bill. I proposed two amendments, both of which were accepted by Senators KYL and SCHUMER—and which the Judiciary Committee adopted without a dissenting vote on April 29, 2003. I believe my amendments improve S. 113 in three ways:

First, the original legislation—which would have amended FISA to expand the definition of ''foreign power'' under 50 U.S.C. §1801(a)(4) to include non-U.S. persons who are engaged in international terrorism—would have allowed the government to extend the initial surveillance order for a period up to 1 year. The 1-year period constitutes the maximum period allowed under the statute and is only invoked under certain circumstances typically limited to groups and entities. More commonly, an order to conduct surveillance of individuals is only extended for a period up to 90 days. Instead, the amendment we offered on April 29, 2003, amended the definition for ''agent of a foreign power'' by creating a new 50 U.S.C. §1801(b)(1)(C). This amendment would apply the default 90-day period to this new category of surveillance targets, which is far more sensible and consistent with the way we treat other individual targets, as opposed to groups, under the statute.

Second, by amending 50 U.S.C. §1801(a), the original legislation would have precluded individuals who are improperly subjected to surveillance or about whom surveillance information has been inappropriately disclosed from filing suit. My amendment, on the other hand, allowed aggrieved individuals who are improperly targeted under this new provision to seek redress in the courts and, where appropriate, recover damages. This modification to Senator KYL'S original bill is consistent with the typical and intended treatment of individuals under 18 U.S.C. §1801(b). *See* H.R. Rep. No. 95–1283, at pt. 1, 98 (1978) (noting that the only aggrieved persons ''barred from the civil remedy will be primarily those persons who are themselves immune from criminal or civil liability because of their diplomatic status'').

Third, my amendment added a sunset provision to the legislation, forcing Congress to re-visit this issue no later than December 31, 2005. The USA Patriot Act (which the Senate overwhelmingly passed a year and a half ago) includes a similar sunset provision for the FISA provisions contained therein. My amendment simply insures that this body will reevaluate the FISA measure on which we are voting today, in the context of its broader re-consideration of those other FISA provisions. Such a review is consistent with our oversight function and, plainly put, ensures that our actions are thoughtful and informed.

Again, I am pleased that Senators KYL and SCHUMER accepted these important revisions to the original text and, on that basis, am happy to support the amended bill that is before the Senate today.

I also would like to commend my colleague, Senator FEINSTEIN, for her efforts to engage this issue responsibly and thoughtfully. She has proposed an alternative, which makes an important contribution to the debate but with which I happen to disagree, for several reasons.

First, my good friend from California asserts that criminal prosecutors will abuse the FISA process by securing FISA surveillance—with its lower burdens of proof—against garden variety criminal targets, rather than pursuant to Title III. I am simply not persuaded that this will be the case. It should be noted that the new section created in this bill has a very high standard, higher indeed than that required by Title III. That is, the government must show probable cause that the FISA target has engaged in acts of ''international terrorism,'' which the statute defines as acts which (i) are a violation of the criminal law under the laws of the United States or any state; (ii) appear intended to influence our government or intimidate our citizens; and (iii) which occur outside the United States or transcend national boundaries. Thus, I doubt that a prosecutor would ever be able to seek a FISA warrant under this section where he would not also be able to obtain a Title III warrant. Morever, I am not convinced that a prosecutor would seek a FISA warrant where their real interest is, not obtaining foreign intelligence information, but rather the eventual prosecution of the FISA target. Given the strict exclusionary rules FISA imposes, prosecutors would be loathe to ever seek a FISA warrant for a target they seek to prosecute out of fear that the judge would suppress the surveillance in a criminal prosecution which was improperly ''boot-strapped'' from a FISA investigation.

Second, the Feinstein amendment asserts that, under the Kyl-Schumer bill, a judge would be a mere ''rubber-stamp'' for a governmental request for a FISA warrant. The amendment presumes that judges do not now have discretion to refuse the government's request, which is not true. Under current law, the judge still must determine that probable cause exists that the individual is an agent of a foreign power engaged in, or in preparation for, acts of international terrorism. S. 113 does nothing to alter that existing requirement. Rather, it makes it clear that any non-U.S. citizen who engages in terrorism or is preparing to engage in terrorism would fall within the definition of an ''agent of a foreign power.'' Nothing in this bill would curtail a judge's ability to second-guess, or look behind, the assertions advanced by the government in its application for a warrant. If there is no basis to believe that probable cause exists, the application would be properly denied. Indeed, we rely on judges for this very purpose—namely, to ascertain the veracity of the facts presented by the government.

As opposed to clarifying the definition of ''agent of a foreign power,'' as the Kyl-Schumer bill does, the Feinstein amendment would allow—but not require—a judge to ''presume'' that an individual is such an agent, which in my view creates a difference without a real distinction. Rather than afford individual targets any added protections, the Feinstein amendment would inject a considerable amount of murkiness into an otherwise certain process and may result in inconsistent rulings by different judges. Likewise, FISA judges may simply decline to apply the presumption in cases where the government cannot show much, if any, link between the non-U.S. citizen and a foreign power. There has been considerable disagreement over whether the Federal Bureau of Investigation had sufficient evidence to show that Zacarias Moussaoui, the so-called ''20th Hijacker,'' was an agent of a foreign power. Yet, I am concerned that a FISA judge might decline to exercise the ''permissive presumption'' in Senator FEINSTEIN's amendment, and hence deny a FISA warrant, in the case of a true ''lone-wolf'' terrorist who cannot be shown to have any links to a foreign power. As such, the FISA ''loophole'' S. 113 seeks to close would be left open. On that basis, I am forced to vote against the amendment.

That is not to say, however, that there is not much more work to be done in this area. We must search for creative ways to give investigators the tools they need to gather information and seek out terrorists living among us, while at the same time vigilantly protect important civil rights and liberties. Toward that end, I welcome the oversight hearings that my friend Senator HATCH, chairman of the Judiciary Committee, has pledged to convene on the implementation of FISA and offer my continued service.

It is my hope that the Senate's action today will assist our government in its effort to detect and root out foreign terrorists bent on violent acts against this great country. I support this bill and urge my colleagues to vote for it.

Mr. HATCH. Mr. President, I commend Senators KYL, SCHUMER, BIDEN and DEWINE for their bipartisan cooperation in supporting S. 113. This bill will provide a critical tool needed by law enforcement and intelligence agencies to fight the war against terrorism. Specifically, S. 113 will address a glaring omission in the Foreign Intelligence Surveillance Act of 1978 referred to as FISA, to authorize the gathering of foreign intelligence information relating to a lone-wolf terrorist, that is, a non-U.S. person who is engaged in international terrorism or preparation thereof. In recognition of the critical need to support law enforcement and intelligence agencies in

the war against terrorism, the Judiciary Committee passed S. 113 by a bipartisan, unanimous vote of 19 to 0.

This bipartisan proposal will enhance the ability of the FBI and intelligence agencies to investigate, detect, and prevent terrorists from carrying out devastating attacks on our country. Specifically, S. 113 will amend the Foreign Intelligence Surveillance Act to include lone-wolf terrorists who engage in international terrorism or activities in preparation thereof without a showing of membership in or affiliation with an international terrorist group. A significant gap in the current statute exists with respect to application of the foreign power requirement to lone-wolf terrorists. S. 113 would authorize FISA surveillance or searches when law enforcement and intelligence agents identify an individual involved in international terrorism but cannot link the terrorist to a specific group.

The administration strongly supports amending FISA to include non-U.S. lone-wolf terrorists. On March 4, 2003, at a Judiciary Committee hearing examining the war on terrorism, both Attorney General Ashcroft and FBI Director Mueller indicated their strong support for fixing this glaring omission in the FISA statute. In fact, Director Mueller testified, both before the Judiciary Committee and previously before the Senate Select Committee on Intelligence, there is an increasing threat of lone extremists who have the motive and ability to carry out devastating attacks against our country.

We need to provide law enforcement and intelligence agencies with the tools needed to protect our country from deadly terrorist attacks. With our recent success in the war against Iraq, the risk of terrorist attacks against our country may well rise. We need to ensure that our country has the ability to investigate and prevent such attacks if carried out by a lone extremist.

While some interest groups that oppose this measure suggest that such a fix is not needed or claim that the FBI failed to properly apply the law in the Moussaoui investigation, that is simply beside the point: The September 11 attack against our country highlighted the need to fill in this gap in the FISA statute.

FISA provides that electronic surveillance or physical searches may be authorized when there is probable cause to believe that the target is either an agent of, or is himself, a ''foreign power''—a term that is currently defined to include only foreign government or international terrorist organizations. Requiring a link to government or international terrorist organizations may have made sense when FISA was enacted in 1978; in that year, the typical FISA target was a Soviet spy or a member of one of the hierarchical, military-style terror groups of that era.

Today the United States faces a much different threat. We are principally confronted not by specific groups or governments, but by a movement of Islamist extremists which does not maintain a fixed structure or membership list, and its adherents do not always advertise their affiliation with this cause. Moreover, in response to our country's efforts to fight terrorism worldwide, terrorists are increasingly operating in a more decentralized manner, far different from the terrorist threat that existed in 1978. The threat posed by a lone terrorist may be very real and may involve devastating consequences, even beyond those suffered by our country on September 11. Given this increasing threat, we have to ensure that intelligence and law enforcement agencies have sufficient tools to meet this new—and even more dangerous—challenge.

While I support S. 113, as passed by the Judiciary Committee, I wish to note my concerns about the amendment offered by Senator FEINGOLD, which has been agreed to, as part of consideration of this matter.

The Feingold amendment would impose new FISA reporting requirements on the Justice Department, and require: (1) reports on the number of U.S. persons targeted by FISA order, by specific categories of surveillance, for example, electronic surveillance, physical searches, pen registers, and access to records; (2) identification of individuals who ''acted wholly alone;'' (3) disclosure of the number of times FISA material was used in a criminal proceeding; and (4) disclosure of portions of FISA pleadings and orders that deal with significant questions of law ''in a manner consistent with the protection of the national security of the United States.''

As I have indicated on other occasions, I support reporting requirements when necessary for Congress to exercise responsible oversight. We have a duty to conduct meaningful oversight of the FISA process, and I am committed to such oversight and ensuring proper reporting requirements are imposed on the Justice Department.

My concern with the Feingold amendment is that the operation of the amendment is unclear and may create confusion rather than bringing clarity to the issue. I would have preferred that we conduct a more deliberate examination of this issue to ensure that the reporting requirements are not harmful and will not create any significant risk of harm to sensitive law enforcement and intelligence operations against terrorists.

More significantly, I am concerned that the Feingold amendment will alter well-established procedures for Congress's review and handling of classified operational intelligence information, in contrast to Congress's review and handling of ''finished'' intelligence information. For many years, and in fact the reason for the creation of the Senate Select Committee on Intelligence was to establish a professional, dedicated Intelligence Committee staff which would handle sensitive operational intelligence information. Congress did so to minimize the potential risk of harm to foreign counterintelligence operations. The accidental or inadvertent disclosure of such material could have a devastating impact on extremely sensitive CIA or FBI counterintelligence operations.

Further, the Senate Select Committee on Intelligence rejected a similar reporting proposal in 1984 because ''the benefits of such disclosure for public understanding of FISA's impact would not outweigh the damage to FBI foreign counterintelligence capabilities that can be reasonably expected to result.''

The FISA statute already sets forth detailed and specific requirements for the reporting of information to the Intelligence and Judiciary Committees, and there is simply no need to disrupt long-established processes and procedures for FISA reporting between the executive branch and the Intelligence and Judiciary Committees relating to the handling of classified operations intelligence information.

While I have these concerns about the Feingold amendment, on balance, I believe that fixing the FISA statue to address the long-wolf terrorist problem is more important than remedying the deficiencies in the Feingold amendment. The potential harm to our country from a lone-wolf terrorist attack is significant and we must act—and act now by passing A. 113.

Again, I commend Senators KYL, SCHUMER, BIDEN, and DEWINE for this important piece of legislation which reflects our bipartisan commitment to ensuring the safety of our country and the need to be vigilant in protecting our country from deadly and devastating terrorist attacks. I urge my colleagues to vote in favor of S. 113.

The PRESIDING OFFICER (Mr. ENZI). Under the previous order, the committee amendment, as amended, is agreed to.

The committee amendment, in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. Under the previous order, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. REID. Mr. President, I yield back all of our time.

The PRESIDING OFFICER. All time has been yielded back.

Mrs. FEINSTEIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The bill having been read the third time, the question is, Shall the bill, as amended, pass? The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Alaska (Ms. MURKOWSKI) is necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware (Mr. BIDEN) and the Senator from Massachusetts (Mr. KERRY) would each vote ''Aye''.

The result was announced—yeas 90, nays 4, as follows:

[Rollcall Vote No. 146 Leg.]

YEAS—90

Akaka	DeWine	Lugar
Alexander	Dodd	McCain
Allard	Dole	McConnell
Allen	Domenici	Mikulski
Baucus	Dorgan	Miller
Bayh	Edwards	Murray
Bennett	Ensign	Nelson (FL)
Bingaman	Enzi	Nelson (NE)
Bond	Feinstein	Nickles
Boxer	Fitzgerald	Pryor
Breaux	Frist	Reed
Brownback	Graham (SC)	Reid
Bunning	Grassley	Roberts
Burns	Gregg	Rockefeller
Campbell	Hagel	Santorum
Cantwell	Hatch	Sarbanes
Carper	Hollings	Schumer
Chafee	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Clinton	Inouye	Smith
Cochran	Jeffords	Snowe
Coleman	Johnson	Specter
Collins	Kohl	Stabenow
Conrad	Kyl	Stevens
Cornyn	Landrieu	Sununu
Corzine	Lautenberg	Talent
Craig	Leahy	Thomas
Crapo	Levin	Voinovich
Daschle	Lincoln	Warner
Dayton	Lott	Wyden

NAYS—4

Byrd	Feingold
Durbin	Harkin

NOT VOTING—6

Biden	Kennedy	Lieberman
Graham (FL)	Kerry	Murkowski

The bill (S. 113), as amended, was passed, as follows:

The title was amended so as to read:

To amend the Foreign Intelligence Surveillance Act of 1978 to cover individuals, other than United States persons, who engage in international terrorism without affiliation with an international terrorist group.

EXECUTIVE SESSION

NOMINATION OF JOHN G. ROBERTS, JR., OF MARYLAND, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

Mr. HATCH. I ask unanimous consent that the Senate immediately proceed to executive session to consider the nomination of John Roberts, to be a circuit judge for the DC Circuit.

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

Mr. HATCH. Mr. President, I am pleased that we are considering the nomination of John Roberts, who has been nominated by President Bush to serve on the United States Court of Appeals for the District of Columbia.

Mr. Roberts was first nominated to this post by President George H.W. Bush in 1992. He has been nominated for this post by two different Presidents on three separate occasions, and has waited more than 11 years for his confirmation, so I am glad to see that this day has finally come when we can expect a vote by the full Senate on his nomination.

Mr. Roberts has exceptional experience as a Supreme Court and appellate advocate. He has argued an astounding 39 cases before the Supreme Court and has argued in every Federal circuit court of appeals. His Supreme Court practice consists of seeking and opposing Supreme Court review, preparing amicus curiae briefs, and helping to prepare other counsel to argue before the Court. His clients have included large and small corporations, trade organizations, nonprofit organizations, States, and individuals.

Mr. Roberts is one of the most accomplished and brilliant legal minds that I have seen in my 27 years as a member of the Senate Judiciary Committee. Not surprisingly, the ABA awarded him its highest possible rating of unanimously well-qualified. He is widely regarded as one of the best appellate attorneys of his generation. After reviewing his legal accomplishments it is easy to see why his colleagues have such respect and admiration for him. I would like to read excerpts from a few of the many letters his colleagues have sent the committee discussing his professionalism, character, and open-mindedness.

The first letter is from 156 members of the Bar of the District of Columbia, including such legal powerhouses as Boyden Gray, who was counsel to the first President Bush, and Lloyd Cutler, who was counsel to President Carter and Clinton. The letter states:

> Although, as individuals, we reflect a wide spectrum of political party affiliation and ideology, we are united in our belief that John Roberts will be an outstanding federal court of appeals judge and should be confirmed by the United States Senate. He is one of the very best and most highly respected appellate lawyers in the nation, with a deserved reputation as a brilliant writer and oral advocate. He is also a wonderful professional colleague both because of his enormous skills and because of his unquestioned integrity and fair-mindedness. In short, John Roberts represents the best of the bar and, we have no doubt, would be a superb federal court of appeals judge.

The committee also received a letter signed by 13 of his former colleagues at the Office of the Solicitor General. The letter states:

> Although we are of diverse political parties and persuasions, each of us is firmly convinced that Mr. Roberts would be a truly superb addition to the federal court of appeals. As the Committee will doubtless hear from many quarters, John is an incomparable appellate lawyer. Indeed, it is fair to say that he is one of the foremost appellate lawyers in the country. . . . The Office then, as now, comprised lawyers of every political affiliation—Democrats, Republicans, and Independents. Mr. Roberts was attentive to and respectful of all views, and he represented the United States zealously but fairly. He had the deepest respect for legal principles and legal precedent—instincts that will serve him well as a court of appeals judge.

Now I would like to make a few comments about Mr. Roberts's impressive background. He entered Harvard College with sophomore standing, where he earned a bachelor's degree in history, summa cum laude, then a law degree, magna cum laude. While in law school, he was an editor of the Harvard Law Review.

Following graduation, Mr. Roberts clerked for Judge Henry Friendly on the Second Circuit and for then-Justice William Rehnquist on the Supreme Court. His public service career included terms as Associate Counsel to President Reagan and Principal Deputy Solicitor General. He currently heads the appellate practice group for the prestigious DC law firm Hogan and Hartson, where his practice has focused on Federal appellate litigation.

Mr. Roberts has been involved with a variety of high-profile and significant legal cases. He has argued on different sides of a variety of different issues, firmly establishing his reputation as a lawyer's lawyer.

Beyond being considered by many to be one of the premier Supreme Court litigators of his generation, the record of John Roberts establishes that he is undeniably mainstream and fair. In fact, while in private practice Mr. Roberts has repeatedly been hired by Democratic public officials and has repeatedly argued what many consider to be the so-called liberal side of cases.

In protecting the environment during the 2002 case of Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency, Mr. Roberts successfully argued in the U.S. Supreme Court, on behalf of a State regulatory agency, in favor of limits on property development and in support of protection of the pristine Lake Tahoe Basin area. Environmental groups hailed the majority decision, saying it would help protect America's countryside from suburban sprawl.

In supporting consumer rights during the 2001 landmark Microsoft antitrust case, Mr. Roberts argued on behalf of the Clinton Department of Justice and a group of primarily Democratic State attorneys general that Microsoft's business practices violated the Sherman Act.

In addition, Mr. Roberts has devoted much of his time to pro bono work. For instance, he represented a class of District of Columbia residents receiving welfare benefits, arguing that a particular change in eligibility standards that resulted in a termination of welfare benefits without an individual hearing denied class members procedural due process.

In another pro bono case, United States v. Halper, Mr. Roberts was invited by the Supreme Court to represent Mr. Halper, who had been previously convicted under Federal criminal law for filing false Medicaid claims.

He successfully argued that the Double Jeopardy Clause barred the imposition of civil penalties under Federal law against an individual who had been convicted and punished under criminal law for the same conduct.

Mr. Roberts also participates extensively in the pro bono program of his firm, assisting his colleagues prepare pro bono appeals on matters such as termination of parental rights, minority voting rights, noise pollution at the Grand Canyon, and environmental protection of Glacier Bay.

I have every confidence that Mr. Roberts will make a great addition to the DC Circuit. He is an exceptionally well-qualified jurist who has distinguished himself as one of the best in the legal profession. I am confident that Mr. Roberts will serve with distinction on the DC Circuit, and I ask for my colleagues' full support of his nomination.

Mr. President, I ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nomination considered and confirmed is as follows:

THE JUDICIARY

John G. Roberts, Jr., of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

Mr. HATCH. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. REID. It is my understanding that this judge has waited about 10 years. He has been nominated several times.

Mr. HATCH. He has waited 12 years, through three nominations, by two different Presidents.

Mr. REID. He is the 124th judge we have approved for the Bush administration. The record is 124 to 2.

Mr. HATCH. Keep in mind, as of tomorrow, those two will be waiting for 2 solid years. We need to get them done, too. I call on my colleagues on the other side to get rid of their wicked and evil ways and allow these people to have votes up and down.

Mrs. BOXER. I object.

Mr. HATCH. I heard an objection from the other side.

I yield the floor.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

AIR CARGO SECURITY IMPROVEMENT ACT

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 76, S. 165, the air cargo security improvement bill.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 165) to improve air cargo security.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with amendments, as follows:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 165

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 ''Air Cargo Security Improvement Act''.

SEC. 2. INSPECTION OF CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

Section 44901(f) of title 49, United States Code, is amended to read as follows:

''(f) CARGO.—

''(1) IN GENERAL.—The Under Secretary of Transportation for Security shall establish systems to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in—

''(A) passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation; or

''(B) all-cargo aircraft in air transportation and intrastate air transportation.

''(2) STRATEGIC PLAN.—The Under Secretary shall develop a strategic plan to carry out paragraph (1).''.

SEC. 3. AIR CARGO SHIPPING.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

[''§ 44922. Regular inspections of air cargo shipping facilities]

''§ 44923. Regular inspections of air cargo shipping facilities

''The Under Secretary of Transportation for Security shall establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, and shall enter into arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States.''.

(b) ADDITIONAL INSPECTORS.—The Under Secretary may increase the number of inspectors as necessary to implement the requirements of title 49, United States Code, as amended by this subtitle.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, is amended by adding at the end the following:

''**[44922].** *44923.* Regular inspections of air cargo shipping facilities''.

SEC. 4. CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is further amended by adding at the end the following:

[''§ 44923. Air cargo security]

''§ 44924. Air cargo security

''(a) DATABASE.—The Under Secretary of Transportation for Security shall establish an industry-wide pilot program database of known shippers of cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. The Under Secretary shall use the results of the pilot program to improve the known shipper program.

''(b) INDIRECT AIR CARRIERS.—

''(1) RANDOM INSPECTIONS.—The Under Secretary shall conduct random audits, investigations, and inspections of indirect air carrier facilities to determine if the indirect air carriers are meeting the security requirements of this title.

''(2) ENSURING COMPLIANCE.—The Under Secretary may take such actions as may be appropriate to promote and ensure compliance with the security standards established under this title.

''(3) NOTICE OF FAILURES.—The Under Secretary shall notify the Secretary of Transportation of any indirect air carrier that fails to meet security standards established under this title.

''(4) SUSPENSION OR REVOCATION OF CERTIFICATE.—The Secretary, as appropriate, shall suspend or revoke any certificate or authority issued under chapter 411 to an indirect air carrier immediately upon the recommendation of the Under Secretary. Any indirect air carrier whose certificate is suspended or revoked under this subparagraph may appeal the suspension or revocation in accordance with procedures established under this title for the appeal of suspensions and revocations.

''(5) INDIRECT AIR CARRIER.—In this subsection, the term 'indirect air carrier' has the meaning given that term in part 1548 of title 49, Code of Federal Regulations.

''(c) CONSIDERATION OF COMMUNITY NEEDS.—In implementing air cargo security requirements under this title, the Under Secretary may take into consideration the extraordinary air transportation needs of small or isolated communities and unique operational characteristics of carriers that serve those communities.''.

(b) ASSESSMENT OF INDIRECT AIR CARRIER PROGRAM.—The Under Secretary of Transportation for Security shall assess the security aspects of the indirect air carrier program under part 1548 of title 49, Code of Federal Regulations, and report the result of the assessment, together with any recommendations for necessary modifications of the program to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 45 days after the date of enactment of this Act. The Under Secretary may submit the report and recommendations in classified form.

(c) REPORT TO CONGRESS ON RANDOM AUDITS.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on random screening, audits, and investigations of air cargo security programs based on threat assessments and other relevant information. The report may be submitted in classified form.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the *Under* Secretary of Transportation *for Security* such sums as may be necessary to carry out this section.

(e) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, as amended by section 3, is amended by adding at the end the following:

''**[**44923.**]** *44924.* Air cargo security''.

SEC. 5. TRAINING PROGRAM FOR CARGO HANDLERS.

The Under Secretary of Transportation for Security shall establish a training program

for any persons that handle air cargo to ensure that the cargo is properly handled and safe-guarded from security breaches.

SEC. 6. CARGO CARRIED ABOARD ALL-CARGO AIRCRAFT.

(a) IN GENERAL.—The Under Secretary of Transportation for Security shall establish a program requiring that air carriers operating all-cargo aircraft have an approved plan for the security of their air operations area, the cargo placed aboard such aircraft, and persons having access to their aircraft on the ground or in flight.

(b) PLAN REQUIREMENTS.—The plan shall include provisions for—

(1) security of each carrier's air operations areas and cargo acceptance areas at the airports served;

(2) background security checks for all employees with access to the air operations area;

(3) appropriate training for all employees and contractors with security responsibilities;

(4) appropriate screening of all flight crews and persons transported aboard all-cargo aircraft;

(5) security procedures for cargo placed on all-cargo aircraft as provided in section 44901(f)(1)(B) of title 49, United States Code; and

(6) additional measures deemed necessary and appropriate by the Under Secretary.

(c) CONFIDENTIAL INDUSTRY REVIEW AND COMMENT.—

(1) CIRCULATION OF PROPOSED PROGRAM.—The Under Secretary shall—

(A) propose a program under subsection (a) within 90 days after the date of enactment of this Act; and

(B) distribute the proposed program, on a confidential basis, to those air carriers and other employers to which the program will apply.

(2) COMMENT PERIOD.—Any person to which the proposed program is distributed under paragraph (1) may provide comments on the proposed program to the Under Secretary not more than 60 days after it was received.

(3) FINAL PROGRAM.—The Under Secretary of Transportation shall issue a final program under subsection (a) not later than 45 days after the last date on which comments may be provided under paragraph (2). The final program shall contain time frames for the plans to be implemented by each air carrier or employer to which it applies.

(4) SUSPENSION OF PROCEDURAL NORMS.—Neither chapter 5 of title 5, United States Code, nor the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the program required by this section.

SEC. 7. REPORT ON PASSENGER PRESCREENING PROGRAM.

(a) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security, after consultation with the Attorney General, shall submit a report in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the potential impact of the Transportation Security Administration's proposed Computer Assisted Passenger Prescreening system, commonly known as CAPPS II, on the privacy and civil liberties of United States Citizens.

(b) SPECIFIC ISSUES TO BE ADDRESSED.—The report shall address the following:

(1) Whether and for what period of time data gathered on individual travelers will be retained, who will have access to such data, and who will make decisions concerning access to such data.

(2) How the Transportation Security Administration will treat the scores assigned to individual travelers to measure the likelihood they may pose a security threat, including how long such scores will be retained and whether and under what circumstances they may be shared with other governmental, non-governmental, or commercial entities.

(3) The role airlines and outside vendors or contractors will have in implementing and operating the system, and to what extent will they have access, or the means to obtain access, to data, scores, or other information generated by the system.

(4) The safeguards that will be implemented to ensure that data, scores, or other information generated by the system will be used only as officially intended.

(5) The procedures that will be implemented to mitigate the effect of any errors, and what procedural recourse will be available to passengers who believe the system has wrongly barred them from taking flights.

(6) The oversight procedures that will be implemented to ensure that, on an ongoing basis, privacy and civil liberties issues will continue to be considered and addressed with high priority as the system is installed, operated and updated.

SEC. 8. MODIFICATION OF REQUIREMENTS REGARDING TRAINING TO OPERATE AIRCRAFT.

(a) ALIENS COVERED BY WAITING PERIOD.—Subsection (a) of section 44939 of title 49, United States Code, is amended—

(1) by resetting the text of subsection (a) after ''(a) WAITING PERIOD.—'' as a new paragraph 2 ems from the left margin;

(2) by striking ''A person'' in that new paragraph and inserting ''(1) IN GENERAL.—A person'';

(3) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(4) by striking ''any aircraft having a maximum certificated takeoff weight of 12,500 pounds or more'' and inserting ''an aircraft'';

(5) by striking ''paragraph (1)'' in paragraph (1)(B), as redesignated, and inserting ''subparagraph (A)''; and

(6) by adding at the end the following:

''(2) EXCEPTION.—The requirements of paragraph (1) shall not apply to an alien who—

''(A) has earned a Federal Aviation Administration type rating in an aircraft; or

''(B) holds a current pilot's license or foreign equivalent commercial pilot's license that permits the person to fly an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds as defined by the International Civil Aviation Organization in Annex 1 to the Convention on International Civil Aviation.''.

(b) COVERED TRAINING.—Section 44936(c) of title 49, United States Code, is amended to read as follows:

''(c) COVERED TRAINING.—

''(1) IN GENERAL.—For purposes of subsection (a), training includes in-flight training, training in a simulator, and any other form or aspect of training.

''(2) EXCEPTION.—For the purposes of subsection (a), training does not include classroom instruction (also known as ground training), which may be provided to an alien during the 45-day period applicable to the alien under that subsection.''.

(c) PROCEDURES.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement section 44939 of title 49, United States Code.

(2) USE OF OVERSEAS FACILITIES.—In order to implement the amendments made to section 44939 of title 49, United States Code, by this section, United States Embassies and Consulates that have fingerprinting capability shall provide fingerprinting services to aliens covered by that section if the Attorney General requires their fingerprinting in the administration of that section, and transmit the fingerprints to the Department of Justice and any other appropriate agency. The Attorney General shall cooperate with the Secretary of State to carry out this paragraph.

(d) EFFECTIVE DATE.—Not later than 120 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement the amendments made by this section. The Attorney General may not interrupt or prevent the training of any person described in section 44939(a)(1) of title 49, United States Code, who commenced training on aircraft with a maximum certificated takeoff weight of 12,500 pounds or less before, or within 120 days after, the date of enactment of this Act unless the Attorney General determines that the person represents a risk to aviation or national security.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation and the Attorney General shall jointly submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the effectiveness of the activities carried out under section 44939 of title 49, United States Code, in reducing risks to aviation and national security.

SEC. 9. PASSENGER IDENTIFICATION.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Under Secretary of Transportation for Security, in consultation with the Administrator of the Federal Aviation Administration, appropriate law enforcement, security, and terrorism experts, representatives of air carriers and labor organizations representing individuals employed in commercial aviation, shall develop guidelines to provide air carriers guidance for detecting false or fraudulent passenger identification. The guidelines may take into account new technology, current identification measures, training of personnel, and issues related to the types of identification available to the public.

(b) AIR CARRIER PROGRAMS.—Within 60 days after the Under Secretary issues the guidelines under subsection (a) in final form, the Under Secretary shall provide the guidelines to each air carrier and establish a joint government and industry council to develop recommendations on how to implement the guidelines.

(c) REPORT.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of this Act on the actions taken under this section.

SEC. 10. PASSENGER IDENTIFICATION VERIFICATION.

(a) PROGRAM REQUIRED.—The Under Secretary of Transportation for Security may establish and carry out a program to require the installation and use at airports in the United States of the identification verification technologies the Under Secretary considers appropriate to assist in the screening of passengers boarding aircraft at such airports.

(b) TECHNOLOGIES EMPLOYED.—The identification verification technologies required as part of the program under subsection (a) may include identification scanners, biometrics, retinal, iris, or facial scanners, or any other technologies that the Under Secretary considers appropriate for purposes of the program.

(c) COMMENCEMENT.—If the Under Secretary determines that the implementation of such a program is appropriate, the installation and use of identification verification technologies under the program shall commence as soon as practicable after the date of that determination.

SEC. 11. BLAST-RESISTANT CARGO CONTAINER TECHNOLOGY.

Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security, and the Administrator of the Federal Aviation Administration, shall jointly submit a report to Congress that contains—

(1) an evaluation of blast-resistant cargo container technology to protect against explosives in passenger luggage and cargo;

(2) an examination of the advantages associated with the technology in preventing damage and loss of aircraft from terrorist action and any operational impacts which may result from use of the technology (particularly added weight and costs);

(3) an analysis of whether alternatives exist to mitigate the impacts described in paragraph (2) and options available to pay for the technology; and

(4) recommendations on what further action, if any, should be taken with respect to the use of blast-resistant cargo containers on passenger aircraft.

SEC. 12. ARMING PILOTS AGAINST TERRORISM.

(a) FINDINGS AND PURPOSE.—

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

(A) During the 107th Congress, both the Senate and the House of Representatives overwhelmingly passed measures that would have armed pilots of cargo aircraft.

(B) Cargo aircraft do not have Federal air marshals, trained cabin crew, or determined passengers to subdue terrorists.

(C) Cockpit doors on cargo aircraft, if present at all, largely do not meet the security standards required for commercial passenger aircraft.

(D) Cargo aircraft vary in size and many are larger and carry larger amounts of fuel than the aircraft hijacked on September 11, 2001.

(E) Aircraft cargo frequently contains hazardous material and can contain deadly biological and chemical agents and quantities of agents that caused communicable diseases.

(F) Approximately 12,000 of the Nation's 90,000 commercial pilots serve as pilots and flight engineers on cargo aircraft.

(G) There are approximately 2,000 cargo flights per day in the United States, many of which are loaded with fuel for outbound international travel or are inbound from foreign airports not secured by the Transportation Security Administration.

(H) aircraft transporting cargo pose a serious risk as potential terrorist targets that could be used as weapons of mass destruction.

(I) Pilots of cargo aircraft deserve the same ability to protect themselves and the aircraft they pilot as other commercial airline pilots.

(J) Permitting pilots of cargo aircraft to carry firearms creates an important last line of defense against a terrorist effort to commandeer a cargo aircraft.

(2) SENSE OF CONGRESS.—It is the sense of Congress that a member of a flight deck crew of a cargo aircraft should be armed with a firearm to defend the cargo aircraft against an attack by terrorists that could result in the use of the aircraft as a weapon of mass destruction or for other terrorists purposes.

(b) ARMING CARGO PILOTS AGAINST TERRORISM.—Section 44921 of title 49, United States Code, is amended—

(1) by striking ''passenger'' in subsection (a) each place that it appears;

(2) by striking ''or,'' and all that follows in subsection (k)(2) and inserting ''or any other flight deck crew member.''; and

(3) by adding at the end of subsection (k) the following:

''(3) ALL-CARGO AIR TRANSPORTATION.—For the purposes of this section, the term air transportation includes all-cargo air transportation.''.

(d) IMPLEMENTATION.—

(1) TIME FOR IMPLEMENTATION.—The training of pilots as Federal flight deck officers required in the amendments made by subsection (b) shall begin as soon as practicable and no later than 90 days after the date of enactment of this Act.

(2) EFFECT ON OTHER LAWS.—The requirements of subparagraph (1) shall have no effect on the deadlines for implementation contained in section 44921 of title 49, United States Code, as in effect on the day before the date of enactment of this Act.

SEC. 13. REPORT ON DEFENDING AIRCRAFT FROM MAN-PORTABLE AIR DEFENSE SYSTEMS (SHOULDER-FIRED MISSILES).

Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall issue a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on how best to defend turbo and jet passenger aircraft from Man-Portable Air Defense Systems (shoulder-fired missiles). The report shall also include actions taken to date, countermeasures, risk mitigation, and other activities. The report may be submitted in classified form.

COMMITTEE AMENDMENTS WITHDRAWN

Mr. HATCH. I ask unanimous consent that the committee amendments be withdrawn.

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

AMENDMENT NO. 538

Mr. HATCH. I send a substitute amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON], for Mr. MCCAIN, Mr. HOLLINGS, Mrs. HUTCHISON, and Mrs. BOXER, proposes an amendment numbered 538.

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

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. MCCAIN. Mr. President, I am pleased that the Senate is considering S. 165, the Air Cargo Security Act. When Congress acted in the aftermath of the September 11, 2001 attacks, its focus was on passenger screening. The Aviation and Transportation Security Act set out a template for the screening of passengers and baggage. We deferred dealing with cargo carried on passenger airlines and on all-cargo aircraft until a review of cargo security could be undertaken. S. 165 is designed to bolster air cargo security and provides further guidance and authority to the Transportation Security Administration—TSA—to ensure continued improvement in these areas.

Let me say at the outset that Senator HUTCHISON has worked very hard on this bill and deserves a great deal of credit. Although this issue was one that everyone believed was very important, she and Senator SNOWE introduced cargo security bills during the second session of last congress. Those bills became a base for the cargo security provisions in last year's S. 2949, the Aviation Security Improvement Act, which passed the Senate, but was not passed by the House. Senator HUTCHISON and Senator FEINSTEIN reintroduced the air cargo provisions from last year as a stand alone bill this year.

Cargo security is one area in which we can and should be proactive to address potential problems and vulnerabilities head on. I note that TSA is already looking at improving cargo security under its mandate in ATSA.

S. 165 requires the TSA to develop a strategic plan to ensure that all air cargo is screened, inspected, or otherwise made secure. Up until now, there has been no consistent oversight in this area and this plan will ensure the continued safety of air cargo.

In addition, TSA is to develop a system for the regular inspection of air cargo shipping facilities. This will ensure that all regulations are being followed and that these shipping facilities are meeting all of their federal security requirements.

TSA is required to establish a database of known shippers in order to further improve the Known Shipper Program. This is in response to concerns expressed by the DOT Inspector General that the existing Known Shipper Program needed some revisions to ensure the continued safety in air cargo.

S. 165 also requires that the existing Federal security plans for indirect air carriers is reviewed and it gives TSA the power to take enforcement actions against indirect air carriers if TSA finds that they are not adhering to security laws or regulations. This enforcement power will ensure that these freight forwarders have the appropriate safeguards in place and are meeting them.

S. 165 also requires all-cargo carriers to develop a security plan that is subject to approval by TSA to ensure that air cargo carried on these carriers is properly screened and protected from tampering. As a part of this requirement, TSA is to develop a security training program for persons who handle air cargo.

Finally, the managers' amendment to S. 165 makes a couple of changes to the bill approved by the Commerce Committee. At the time of Committee consideration, we were working with the TSA on a number of their technical comments. We were unable to complete these efforts prior to the markup. These have now been worked-out and are included.

The Commerce Committee also adopted an amendment offered by Senator NELSON of Florida that extends the Federal Government's oversight of foreign students receiving flight training in the United States. Some members of the committee expressed concern that the requirements of the amendment would be too onerous on flight schools and Senator NELSON agreed to work on these issues. A compromise has been developed that met the concerns of both sides and is included in the amendment.

I urge the Senate to approve this bill that will strengthen the security of our cargo aviation system.

I also note my friend, Senator BOXER from California, continues to be heavily involved in the issue of protecting

our airliners from the possibility of a missile attack. I thank her for her efforts in that direction. I am encouraged by the information she has given to me that the TSA apparently is very serious in working on this threat to the security of aviation.

I again thank my friend from Texas for her outstanding work on this issue and I think it lays out a very reasonable but very important template for ensuring the security of our cargo aircraft, the same way as we worked together on that of commercial airliners.

I thank my colleague, I thank all who were involved in this very important issue, and I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, Senator HOLLINGS asked me if I would be the Democratic manager here. I want to say to Senator HUTCHISON, thank you so much for all your hard work. I also thank Senator HOLLINGS and Senator ROCKEFELLER, Senator WYDEN—frankly, the whole committee. This is one committee that does work on a bipartisan basis and it is very refreshing, I might say.

S. 165 takes needed steps to respond to concerns that have been raised about the status of air cargo security in the U.S., and will act to close a loophole that has left our aviation system vulnerable to a terrorist attack.

Last year, Admiral James Loy, the Under Secretary of Transportation for Security, expressed his concern, in testimony before the Senate Commerce Committee, that air cargo security needed to be strengthened or it would remain a potential backdoor open for terrorists to exploit. These concerns are well-founded as, prior to September 11, 2001, the Department of Transportation Inspector General's—DOT IG—Office had confirmed that it was possible to ship dangerous items on aircraft without ever having the contents of packages screened. Since the terrorist attacks of 9–11, significant changes have occurred to the cargo industry in response to this security loophole, but more must be done. Last year, the Senate passed a comprehensive cargo security bill, but time ran out on the 107th Congress before the House could properly consider it. We need to pass S. 165 now, and make certain the foundation for addressing this matter is put into law.

S. 165 will instruct the Transportation Security Administration—TSA—to establish an inspection program for all cargo that is transported through the Nation's air transportation system. The bill includes language from the legislation which passed in the Senate last year requiring the creation of an industry-wide database of known shippers of cargo on passenger aircraft and an assessment of the current indirect air carrier program, random inspections of indirect air carrier facilities, and a report to Congress on the random audit system. In addition, S. 165 authorizes the appropriation of necessary sums for TSA to carry out an air cargo security program, and mandates the development of a training program for all air cargo handlers.

We have come close to closing the loopholes in cargo security before, but the process must be completed. This issue is critical to the future of aviation security, air travelers and our economy. Congress should act now to pass this legislation before a tragic, avoidable incident forces our hand.

I close by thanking the committee for adding actually four amendments that we worked on. I thank my staff for working so hard on this as well.

First of all, we have in this bill made sure the cargo pilots have the same opportunity to protect the cockpit as pilots in commercial planes. They are going to be part of this program now. I am very pleased about that.

Second, there is a study in here on the best way to proceed on blast-resistant containers. I have seen Kevlar material which will contain a bomb blast so that it doesn't wreak havoc and cause a horrible tragedy. So we are looking at that.

Third, something that Senator MCCAIN mentioned, we have included a study to look at the best defense for shoulder-fired missiles. During the break, I went to San Diego and I stood on the roof of a parking garage at the airport and, believe me, I felt like I could touch the aircraft as they came in for a landing. I looked around and realized this is a great vulnerability. Many terrorist groups have these shoulder-fired missiles, or they can buy them for as little as $8,000. We have defenses we have on Air Force One, on military planes, with which El Al has their fleet protected. We need to protect our fleet.

We have a study in this particular bill just in case the study that is going on via the supplemental emergency bill gets bogged down. So it is a backup.

Last, I was very concerned to learn fake IDs are very easy to use, when you check into an airport. We have a study here to come up with a plan on how to use high technology to spot a fake ID.

I am very pleased to be here. Again, I thank Senator HOLLINGS for giving me this honor to express my support. I believe we are going to have a voice vote. I am very happy about it and I look forward to seeing this bill become law.

With that, I yield the floor. I know my friend from Texas, the author of this bill, has a good deal to say about this important piece of legislation.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, the Air Cargo Security Act will make such a difference in our Nation's air security. I think we have done a lot since 9/11. Since the 9/11 attacks, we have made tremendous progress in transportation security. We have created a new Department of Homeland Security. We have established the Transportation Security Agency and invested heavily in personnel and equipment. However the one thing we have not done in the same way that we have protected the top of the airplane and the airport, is that we have not yet secured the belly of the aircraft. This is where the cargo is shipped. That is what the bill we are passing today would do.

The Air Cargo Security Act would establish a reliable known-shipper program, mandate inspections of cargo facilities, direct the Transportation Security Agency to work with foreign countries to have regular checks at facilities that bring cargo into the United States. The legislation develops a training program for air cargo handlers, and give TSA the power to revoke the license of a shipper or freight forwarder whose practices are unsound.

As the Senator from California mentioned, her amendment will allow cargo pilots to participate in the same security training as airline pilots and the legislation will require background checks for all noncitizens who would undergo flight training. These are just a few of the provisions that I think will go a long way to securing the entire aircraft and our country.

I think we have seen a dramatic improvement in the safety of our aircraft and our airports.

I want to make sure that America has the safest aviation system in the world. I think we can do it. This air cargo bill will make a difference. This bill passed the Senate last year, and I hope very much that the House will pass the bill this year and the President will sign it. Then we will give TSA the authority it needs to do this very important work.

Today, there is no doubt in my mind that the traveling public is considerably safer than we were on September 10, 2001. That is important to recognize. Our screeners undergo background checks, training and testing. Checked bags are scrutinized. Flight crew training has been improved. We all are traveling under a more secure system.

While our efforts in the 107th Congress have dramatically enhanced security, we in the 108th must continue to strive for seamless operations. This responsibility includes closing the cargo security loophole. It makes no sense to inconvenience airline passengers with security screening and baggage checks if we do not establish controls over the cargo traveling in the belly of the same plane. Currently, twenty-two percent of all air cargo in the U.S. is carried on passenger flights, only a tiny fraction of which is inspected. That is inexcusable.

Last year, Senator FEINSTEIN and I commissioned a GAO report on the security of our existing air cargo system, and the Commerce Committee held a closed hearing on this issue. The report reveals some very troubling facts. Security considerations prevent the report from getting too specific. But the GAO found that air cargo is vulnerable to theft and tampering while it is in

transit, and while it is in supposedly secure cargo facilities.

According to the report, identification cards used by cargo workers are generally not secured with fingerprints or other biometric identifiers. They can be counterfeited. Background checks for cargo employees are inadequate.

Perhaps the weakest link in the cargo security chain is the freight forwarder. These are the middlemen who collect cargo from shippers and deliver it to the air carrier. Regulations governing these companies are lax, and the TSA is finding security violations as it conducts inspections. Under current law, however, TSA lacks the authority to revoke the shipping privileges of freight forwarders that repeatedly violate security and procedural rules. The Air Cargo Security Act gives TSA that power.

Air cargo security is not a new problem. In 1988, Pan Am 103 went down over Lockerbie, Scotland because of explosives planted inside a radio in the cargo hold of a passenger airplane. The 1996 Valujet crash in the Everglades was caused by high-pressure tanks that never should have been place aboard a passenger aircraft.

This legislation will strengthen air cargo security on all commercial flights. Specifically, this bill establishes a more reliable known shipper program by requiring inspections of facilities, creating an accessible shipper database, and providing for tamper-proof identification cards for airport personnel. It also gives the TSA the tools required to hold shippers accountable for the contents they ship by allowing the administration to revoke the license of a shipper or freight forwarder engaged in unsound or illegal practices.

This Air Cargo Security Act also requires the TSA to develop a comprehensive training program for cargo professionals as well as an approved cargo security plan. The rules and procedures in this bill were developed in consultation with the TSA, the airlines, and the cargo carriers to ensure that the requirements are aggressive, but will not cause hardship to an already-stressed industry. In 2001, cargo accounted for about $13 billion, or 10 percent, of the passenger airlines' total revenue.

I helped craft the assistance package set forth in the recent Supplemental Appropriations bill, and I applaud the way the unions have stepped to the plate and engaged in good faith negotiations to relieve financial stress on the carriers. I will fight to protect the one million aviation-related jobs nationwide. However, the aviation industry can never afford another 9/11. Air cargo is the largest loophole left in our aviation security network. It must be closed.

We will oversee the bill's implementation to ensure that it is accomplished with a minimum of expense to our critical, yet endangered aviation industry.

To strengthen air cargo security and passenger safety, I urge my collegues to support the Air Cargo Security Act.

I thank all of my colleagues for their support. I thank the chairman of the committee, Mr. MCCAIN, and all of those who worked with me on this. I think we are doing a great job. Senator LOTT, the chairman of the Aviation Subcommittee, has worked with me on this. We have worked with the airlines. We don't want to burden the airlines at this time because they have had many shocks to their system. So we have worked with them to make sure that the actions we take are done in a responsible way.

I ask my colleagues for their support.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, before she leaves the floor, let me commend our colleague from Texas, Senator HUTCHISON, who has spent an enormous amount of time on this issue. It has been particularly helpful to this Senator as I worked on some of the privacy issues I will be discussing. I thank my colleague for all of her good work.

Earlier this year I spoke on the floor about what I think has been the most important privacy issue of our time. That is the proposal for what is known as the Total Information Awareness Program. This would constitute the biggest surveillance program in American history. In the U.S. Senate, Senators INOUYE, STEVENS, and FEINSTEIN have been working on a bipartisan basis with our colleagues in both political parties. We put in place sensible restrictions so as to ensure accurate congressional oversight.

What we called for was a requirement that first there be a report by the proponents of the program and the agencies involved on how the program would work.

Second, there is a requirement that to deploy any of the technology under the Total Information Awareness Program, there would have to be explicit congressional approval. This was a momentous step for the Senate to pass this legislation unanimously.

I am rising today to discuss what I think is yet another very significant privacy question which is an issue that needs debate in committee on this particular bill: the air cargo security legislation. The air cargo security legislation includes a proposal that I offered regarding what is known as CAPPS II, the passenger prescreening system that the Transportation Security Administration is developing. This program would do a computer search on each airline passenger to determine who should be subject to more careful security screening and, in some cases, who shouldn't be allowed to get on a plane.

All of us in the U.S. Senate understand that it is critically important to protect the security and safety of those who fly, and we certainly want to look at ways to do it that are smart and, particularly, target resources in an efficient way. But to set up a system that seeks information on each and every aircraft traveler and uses that system to assign scores to every individual—a score as to who might possibly be a threat—does raise some very significant privacy questions for the Senate.

The American people will want to know whether that system is narrowly limited for a specific purpose or whether it would become an all-purpose electronic snooping system. The public wants to know whether there are accurate safeguards to be sure the system won't be abused and sound procedures to provide passengers with the means to address mistakes.

Verbal assurances that these technologies will be used only on ''lawfully collected information'' are not enough. For one thing, ''lawfully collected information'' can include almost anything—my medical information, financial information, the books I have read, places I have visited. This same information—for each of my distinguished colleagues and millions of law-abiding citizens—can also be ''lawfully collected.''

In order to protect our civil liberties and right to privacy, Congress must be fully and publicly briefed on these types of new technological efforts.

As the New York Times editorial page said earlier this year, identifying travelers who may pose a terrorist threat is ''a worthy goal'' but also ''raises serious privacy and due process concerns, which the government needs to address in a forthright manner.'' I ask unanimous consent that the text of this article be printed in the RECORD.

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

[From the New York Times, Mar. 11, 2003]

THE NEW AIRPORT PROFILING

Having successfully fielded thousands of newly minted federal agents to screen air travelers and their luggage, the Transportation Security Administration is now turning to a far more controversial endeavor. The agency is developing a sophisticated screening system designed to identify travelers who may pose a terrorist threat.

It is a worthy goal—one ordered up by Congress—but the creation of a highly intrusive federal surveillance program raises serious privacy and due process concerns, which the government needs to address in a forthright manner.

The notion of electronic profiling is not new. Using such criteria as whether a passenger paid cash for a ticket, a rudimentary system designed in the mid-1990's helped airlines flag passengers deserving heightened scrutiny. What that usually meant was that their checked luggage was carefully inspected. Some of the Sept. 11 hijackers were reported to have been picked out by that system, but it did little good since they did not check any bags.

The new profiling system is a quantum leap. In addition to evaluating certain travel-related behavior and looking for passenger names on watch lists, the new system will give the transportation agency access to numerous public and private databases the moment a passenger books a flight. Exactly which ones has not yet been determined, but

they may include the records of Department of Motor Vehicle offices, banks and credit-rating agencies.

After the program is in place, which could be as early as the end of this year, the Transportation Security Administration will assign each passenger a risk level: green, yellow or red. Travelers will not be informed of their designations, which will be encrypted onto their boarding passes. The T.S.A. says it is mindful of the obvious privacy concerns raised by such a system, though it points out that it will not be amassing new databases, but rather mining ones already used routinely to profile consumers. The agency says it is not interested in knowing whether you bounced a check five years ago, or whether you have paid your parking tickets, but in authenticating your identity.

Privacy principles are not necessarily sacrosanct, but this plan runs the risk of overreaching. For one thing, it could quickly lead to mistaken actions based on inaccurate information.

More worrisome is the possibility that this system could grow into a runaway vacuum cleaner, sweeping up all manner of data that can then be misused by the government. Congress recently put the brakes on the Pentagon's Total Information Awareness project, a dangerously uncontrolled program that was designed to track the activities of millions of Americans. Lawmakers must ensure that the transportation agency's profiling system does not become an all-purpose equivalent.

Mr. WYDEN. Mr. President, this article identifies the issue with respect to travelers. I spoke about those who may pose a terrorist threat. It is a worthy goal. But I also said that this issue raises serious privacy concerns which the government needs to address in a forthright way, and addressing privacy concerns in a forthright manner is what the legislation now does as a result of the amendment involving this passenger prescreening program.

What you are going to have under the legislation now is a chance to get the key questions answered with respect to how this program would work. It is my intention that the information with respect to how this program would work would be available for public scrutiny as well.

I met with those at the TSA who spearhead this passenger prescreening program. They certainly raise a number of issues with respect to privacy protections which they would like to include. But at this point, the only written information that we have on CAPPS II was published in the Federal Register on January 15 of this year.

That program outlines a broad-based initiative that would house records such as ''risk assessment reports,'' financial and transactional data, public source information, proprietary data, and information from law enforcement and intelligent sources.

This broad array of information may then be disclosed to ''Federal, State, territorial, tribal, local, international, or foreign agencies.'' Suffice it to say, based on the Federal Register description on January 15, 2003, the public is concerned about how this kind of program is going to work.

Clearly, our country wants to fight terrorism ferociously. We want to take the steps necessary to protect our airline passengers. But something which is as sweeping and as broad as the proposal that was outlined in the Federal Register for screening airline passengers certainly ought to give the American people and the U.S. Senate pause.

I think it is important that the public not be kept in the dark on this issue. That is why the legislation on the program which I was able to include in the air cargo security bill is important. It is going to bring some sunshine to this issue—some long overdue sunshine.

I hope my colleagues will continue to work with me and others in a bipartisan basis on the privacy issues. We made very significant progress with respect to the limitations that were put on the Total Information Awareness Program. The effort that is now underway with respect to screening airline passengers presents some other very significant privacy issues. We ought to continue to make sure that as we take steps to protect the public safety, we remember that it is critically important to protect privacy rights and civil liberties. We now are making an effort to do that in the air cargo security legislation.

I urge my colleagues to support the bill tonight.

I yield the floor.

The PRESIDING OFFICER (Mr. VOINOVICH). Without objection, the amendment is agreed to.

The amendment (No. 538) was agreed to.

Mr. ROCKEFELLER. Mr. President, I rise in support of S. 165, the Air Cargo Security Improvement Act. This legislation is another critical piece in our ongoing efforts to increase the security of our aviation system. I commend my colleagues, Senator HUTCHISON and Senator FEINSTEIN, for their continued leadership on this critical issue.

Over the past 18 months, we have worked every day to improve security in our airports and on our airplanes. While we set in place unprecedented improvements in aviation security, clear gaps remain. Today's legislation is aimed at filling security gaps in the vast and economically vital air cargo network by providing the Transportation Security Administration and related security agencies with the authority and resources they need to implement new air cargo security requirements.

This important legislation, which passed the Senate last year as part of S. 2949, the Aviation Security Improvement Act, requires TSA to establish a system to screen, inspect, or otherwise ensure security of all cargo transported by air and to establish a system for regular inspection of airport and cargo shipping facilities. Unfortunately, the House of Representatives did not act on this legislation last year. Improving the security of our nation's air cargo system must be addressed this year, and I am pleased that the Senate has acted quickly to pass this vital legislation again in the 108th Congress.

The Air Cargo bill would take several steps to improve the security of air cargo. The bill requires the Transportation Security Agency, TSA, to develop a strategic plan to ensure that all air cargo is screened, inspected, or otherwise made secure. TSA would also be required to develop a system for the regular inspection of air cargo shipping facilities, the establishment of a database of known shippers, companies and persons that regularly ship cargo, in order to bolster the Known Shipper Program, and review and assess the existing federal security program for freight forwarders, companies that accept and consolidate freight and tender it to an all cargo or passenger carrier for air shipment. The bill allows TSA to revoke the certificates of freight forwarders if the agency finds that they are not adhering to security laws or regulations.

The legislation also mandates that TSA develop a security training program for persons who handle air cargo and all cargo carriers would be required to develop security plans that would be subject to approval by TSA.

During the Commerce Committee's consideration of the legislation a number of important amendments offered by Senators WYDEN, BOXER, and BILL NELSON were adopted that strengthened the bill.

These provisions included requiring Secretary of Homeland Security to report to Congress on the impact on the privacy and civil liberties of the Computer Assisted Passenger Prescreening System, requiring background checks of alien flight school applicants to include applicants for flight training of planes below 12,500 pounds, and to transfer these responsibilities from the Department of Justice to the Transportation Security Administration, and requires guidelines for verifying passenger identification.

The Committee also adopted provisions to have the FAA and TSA conduct a study on blast-resistant cargo containers, allowing cargo pilots to participate in the Federal Flight Deck Officer program, and requiring the Department of Homeland Security to issue a report on how best to defend passenger aircraft from shoulder-fired missiles.

The Air Cargo Security Improvement Act is another important step in our efforts to improve our nation's aviation security network, but it is by no means the final step. I spend countless hours each week as part of my duties on the Intelligence Committee and we all recognize that the changing nature of threats will require continued vigilant oversight and modifications to our security network. There are no guarantees, but we can and must continue to work every day to make sure that the people who fly and the places they fly from are safe.

Mr. NELSON of Florida. Mr. President, I rise in support of S. 165 the Air Cargo Security Improvement Act.

This legislation is another important step toward fully protecting the United States and all Americans from terrorists who intend to use our aviation system to commit future attacks.

Among other provisions, including the creation of a security program to protect our air cargo from terrorist attacks, this bill mandates crucial studies on blast resistant cargo containers, the Transportation Security Administration's passenger screening program known as CAPPS II, and most importantly, how to defend our airliners from shoulder missile attacks similar to the attack last December on an Israeli charter jet in the skies over Kenya.

We must continue to be vigilant in protecting our Nation. This legislation addresses a deep concern of mine regarding foreign citizens coming to the United States to receive pilot training on all sizes of aircraft. Unfortunately, we have seen what can happen when people come to our country with the specific intent to do us great harm. Many of the September 11 hijackers learned to fly the planes they used as deadly weapons at flight schools here in the United States.

Section 113 of the Aviation and Transportation Security Act, which was enacted in the 107th Congress, requires background checks of all foreign flight school applicants seeking training to operate aircraft weighing 12,500 pounds or more. While this provision should help prevent September 11th-style attacks by U.S.-trained pilots using hijacked jets in the future, it does nothing to prevent different types of potential attacks against our domestic security. To rectify this problem, I introduced S. 236 together with Senators CORZINE, ENZI, FEINSTEIN, and THOMAS earlier this year.

The FBI has issued terrorism warnings indicating that small planes might be used to carry out suicide attacks. Small aircraft can be used by terrorists to attack nuclear facilities, carry explosives, or deliver biological or chemical agents. For example, if a crop duster filled with a combination of fertilizers and explosives were crashed into a filled sporting event stadium, thousands of people could be seriously injured or killed. We cannot allow this to happen. We need to ensure that we are not training terrorists to perform these activities. We cannot allow critical warnings to go unheeded.

This bill will close an important loophole and answer the critical warnings issued by the FBI by extending the background check requirement to all foreign applicants to U.S. flight schools, regardless of the size aircraft they seek to learn to fly. It also transfers the entire security background check program from the Department of Justice to the Department of Homeland Security, specifically to the Transportation Security Administration. It is my expectation that the Transportation Security Administration, which provided excellent advice in the fine tuning of this legislation, will apply a stringent level of background screening to all foreign nationals who seek flight training here in the United States. We cannot allow anyone to slip through the cracks. We cannot aid anyone who intends to do harm to Americans and to our Nation.

I thank the distinguished chairman and ranking member of the Commerce Committee, Senators MCCAIN and HOLLINGS, and their staffs, for working with me to ensure inclusion of this provision in the bill.

Mrs. FEINSTEIN. Mr. President, I thank Senator HUTCHISON for her work on the Air Cargo Security Act. Last year this bill passed the Senate and I look forward to passing this legislation again today. Hopefully the House will take up this legislation promptly and send it to the President's desk.

Earlier this year Senator HUTCHISON and I released a report from the General Accounting Office that demonstrates why the Congress and the Transportation Security Administration must—together—move quickly to shore up our vulnerabilities to protect against another terrorist attack.

I strongly believe that we must increase our defenses across the board to anticipate the next attack, not just correct the vulnerabilities that were already exploited by terrorists on September 11.

After September 11, Congress moved quickly to federalize the airport security screening workforce to prevent more hijackings, but we have not done enough to increase our air cargo security.

The General Accounting Office report shows that Congress must require the TSA to develop a strategic plan to screen and inspect air cargo to protect our Nation's air transportation system. According to this report, our air cargo system remains vulnerable to a terrorist attack because:

First, there aren't enough safeguards in place to ensure that someone shipping air cargo under the ''known shipper'' program has taken the proper steps to protect against use by terrorists;

Second, cargo tampering is possible at various points where cargo transfers from company to company;

Third, air cargo handlers are not required to have criminal background checks, and they do not always have their identification verified;

Fourth, and most importantly, most cargo shipped by air is never screened.

To address these problems, the GAO recommends that the Transportation Security Administration develop a comprehensive plan for improving air cargo security.

The air cargo legislation we are passing today, directs the TSA to: Develop a strategic plan to ensure the security of all air cargo; establish an industrywide pilot program database of known shippers; set up a training program for handlers to learn how to safeguard cargo from tampering; and inspect air cargo shipping facilities on a regular basis.

The Aviation Security Act Congress passed after September 11 required the Transportation Security Administration to screen and inspect air cargo ''as soon as practicable.'' The GAO report shows we cannot wait any longer. The time is now for the Senate to again take up this legislation, again pass this legislation, and for the TSA to prevent terrorists from tampering with the cargo loaded into the underbelly of our airplanes.

The General Accounting Office recommends that the Under Secretary for Transportation develop a comprehensive plan for air cargo security that includes priority actions identified on the basis of risk, costs, deadlines for completing those actions, and performance targets.

The TSA has a great deal of options at its disposal. The TSA could: Screen air cargo for explosives; secure cargo with high-tech seals; control access to holding areas containing cargo; use cargo tracking systems; install more cameras in cargo areas at airports; use blast resistant containers; have more bomb-sniffing dogs; put cargo in decompression chambers before loading it onto an aircraft; require the identity of people making air cargo deliveries to be checked; establish an industrywide computer profiling system; require criminal background checks for employees at freight forwarders and consolidators; and require third party inspections.

We do not expect the TSA to X-ray and scan all cargo for explosives because shippers and carriers would be able to process only 4 percent of cargo received daily, which would severely disrupt the air cargo industry. However, the Federal Government can deploy a combination of the techniques I have listed to implement a comprehensive security plan for air cargo.

Since one half of the hull of each passenger aircraft is typically filled with cargo and 22 percent of all cargo transported by plane is loaded on passenger flights, I believe air cargo security is just as important as passenger security. In fact, you cannot keep passengers safe without stronger air cargo security.

Each time there is a major jet crash or bombing, we reexamine our aviation security. I hope it will not take another accident or attack for us to finally pass this legislation into law.

I thank Senator HUTCHISON, Senator MCCAIN, and Senator HOLLINGS for their leadership on this issue of transportation security, and I look forward to this bill being signed into law.

Ms. SNOWE. Mr. President, I rise today in support of legislation before the Senate that addresses what I feel is one of the most glaring loopholes in our homeland security net: that of the lax air cargo security infrastructure in our country.

In 2001, with the passage of the Aviation and Transportation Security Act,

we reinvented aviation security. We overturned the status quo, and I am proud of the work we did. We put the Federal Government in charge of security and we have made significant strides toward restoring the confidence of the American people that it is safe to fly. We no longer have a system in which the financial ''bottom line'' interferes with protecting the flying public. We also addressed the gamut of critical issues, including baggage screening, additional air marshals, cockpit security, and numerous other issues.

There is more work to be done. We must not lose focus, and we must maintain a continuity of commitment. If we are to fulfill our obligations to confront the aviation security challenges we face in the aftermath of September 11, we must remain aggressive. We need a ''must-do'' attitude, not excuses about what ''can't be done,'' because we are only as safe as the weakest link in our aviation security system.

I am a strong supporter of legislation that we are considering today, the Air Cargo Security Act, a bill intended to strengthen the air cargo security system in this country. According to the GAO, a full 22 percent of all the cargo shipped by air in this country in 2000 was shipped on passenger flights—and half of the hull of a typical passenger plane is filled with cargo. The Department of Transportation Inspector General has recommended that current air cargo controls be tightened, particularly the process for certifying freight forwarders and assessing their compliance with security requirements, and has warned that the existing screening system is ''easily circumvented.'' This must not be allowed to stand.

Moreover, according to a Washington Post report last year, internal TSA documents warn of an increased risk of an attack designed to exploit this vulnerability because TSA has been focused primarily on meeting its new mandates to screen passengers and luggage. This is clear evidence that cargo security needs to be bolstered. And time is not on our side.

At many of the Senate Commerce Committee's aviation security hearings since 9/11, I have expressed concern about the significant outstanding air cargo security issues that we face. On January 23, I introduced legislation which would require TSA to put together a comprehensive air cargo security plan. And while TSA was developing their plan, my bill mandated that interim security measures be put into place, which include random cargo screening, greater scrutiny of shippers and a training regime for air cargo handlers.

The bill before us today, the Air Cargo Security Act, incorporates many of the provisions of my bill. First of all, it would require TSA to establish a system to ensure the security of all cargo transported in the U.S. on both passenger aircraft and cargo aircraft, which must be finalized within 6 months of enactment. It is essential that TSA have a comprehensive plan in place as soon as possible, so that they can go after the most glaring security loopholes in the air cargo system. Secondly, the bill includes language I authored establishing a pilot program would be to allow the Secretary of Homeland Security to test various techniques for screening cargo being loaded onto passenger planes including random physical screening. Today, virtually no cargo loaded onto airliners is screened, and it is vital that TSA settle soon on the best method of cargo screening with an eye towards deploying those methods in airports around the country.

Also, in response to concerns that I had raised about security at foreign cargo facilities that ship to the U.S. by air, the legislation includes a provision requiring TSA to work with foreign countries to conduct regular inspections at facilities transporting air cargo to the U.S. Finally, the bill also includes a provision from my bill to develop a detailed training program for all persons that handle air cargo. This will ensure that the cargo is properly handled and safe-guarded from security breaches.

The Air Cargo Security Act would also require TSA to establish an industrywide database of shippers who ship on passenger planes. I know that the TSA has already been working on this database. The bill also seeks to greatly increase oversight of indirect air carriers, ''freight forwarders,'' complete with a system of random TSA inspections.

On last September 11, terrorists exposed the vulnerability of our commercial aviation network in the most horrific fashion. The landmark aviation security legislation was a major step in the right direction, but we must always stay one step ahead of those who would commit vicious acts of violence on our soil aimed at innocent men, women, and children.

The bill before us works towards that goal, and therefore I am pleased to support it.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 165

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 ''Air Cargo Security Improvement Act''.

SEC. 2. INSPECTION OF CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

Section 44901(f) of title 49, United States Code, is amended to read as follows:

''(f) CARGO.—

''(1) IN GENERAL.—The Under Secretary of Transportation for Security shall establish systems to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in—

''(A) passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation; or

''(B) all-cargo aircraft in air transportation and intrastate air transportation.

''(2) STRATEGIC PLAN.—The Under Secretary shall develop a strategic plan to carry out paragraph (1) within 6 months after the date of enactment of the Air Cargo Security Improvement Act.

''(3) PILOT PROGRAM.—The Under Secretary shall conduct a pilot program of screening of cargo to assess the effectiveness of different screening measures, including the use of random screening. The Under Secretary shall attempt to achieve a distribution of airport participation in terms of geographic location and size.''.

SEC. 3. AIR CARGO SHIPPING.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

''§ 44922. Regular inspections of air cargo shipping facilities

''The Under Secretary of Transportation for Security shall establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, and shall enter into arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States.''.

(b) ADDITIONAL INSPECTORS.—The Under Secretary may increase the number of inspectors as necessary to implement the requirements of title 49, United States Code, as amended by this subtitle.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, is amended by adding at the end the following:

''44922. Regular inspections of air cargo shipping facilities''.

SEC. 4. CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is further amended by adding at the end the following:

''§ 44923. Air cargo security

''(a) DATABASE.—The Under Secretary of Transportation for Security shall establish an industry-wide pilot program database of known shippers of cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. The Under Secretary shall use the results of the pilot program to improve the known shipper program.

''(b) INDIRECT AIR CARRIERS.—

''(1) RANDOM INSPECTIONS.—The Under Secretary shall conduct random audits, investigations, and inspections of indirect air carrier facilities to determine if the indirect air carriers are meeting the security requirements of this title.

''(2) ENSURING COMPLIANCE.—The Under Secretary may take such actions as may be appropriate to promote and ensure compliance with the security standards established under this title.

''(3) NOTICE OF FAILURES.—The Under Secretary shall notify the Secretary of Transportation of any indirect air carrier that fails to meet security standards established under this title.

''(4) WITHDRAWAL OF SECURITY PROGRAM APPROVAL.—The Under Secretary may issue an order amending, modifying, suspending, or revoking approval of a security program of an indirect air carrier that fails to meet security requirements imposed by the Under Secretary if such failure threatens the security of air transportation or commerce. The

affected indirect air carrier shall be given notice and the opportunity to correct its noncompliance unless the Under Secretary determines that an emergency exists. Any indirect air carrier that has the approval of its security program amended, modified, suspended, or revoked under this section may appeal the action in accordance with procedures established by the Under Secretary under this title.

''(5) INDIRECT AIR CARRIER.—In this subsection, the term 'indirect air carrier' has the meaning given that term in part 1548 of title 49, Code of Federal Regulations.

''(c) CONSIDERATION OF COMMUNITY NEEDS.—In implementing air cargo security requirements under this title, the Under Secretary may take into consideration the extraordinary air transportation needs of small or isolated communities and unique operational characteristics of carriers that serve those communities.''.

(b) ASSESSMENT OF INDIRECT AIR CARRIER PROGRAM.—The Under Secretary of Transportation for Security shall assess the security aspects of the indirect air carrier program under part 1548 of title 49, Code of Federal Regulations, and report the result of the assessment, together with any recommendations for necessary modifications of the program to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 60 days after the date of enactment of this Act. The Under Secretary may submit the report and recommendations in classified form.

(c) REPORT TO CONGRESS ON RANDOM AUDITS.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on random screening, audits, and investigations of air cargo security programs based on threat assessments and other relevant information. The report may be submitted in classified form.

(d) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, as amended by section 3, is amended by adding at the end the following:

''44923. Air cargo security''.

SEC. 5. TRAINING PROGRAM FOR CARGO HANDLERS.

The Under Secretary of Transportation for Security shall establish a training program for any persons that handle air cargo to ensure that the cargo is properly handled and safe-guarded from security breaches.

SEC. 6. CARGO CARRIED ABOARD ALL-CARGO AIRCRAFT.

(a) IN GENERAL.—The Under Secretary of Transportation for Security shall establish a program requiring that air carriers operating all-cargo aircraft have an approved plan for the security of their air operations area, the cargo placed aboard such aircraft, and persons having access to their aircraft on the ground or in flight.

(b) PLAN REQUIREMENTS.—The plan shall include provisions for—

(1) security of each carrier's air operations areas and cargo acceptance areas at the airports served;

(2) background security checks for all employees with access to the air operations area;

(3) appropriate training for all employees and contractors with security responsibilities;

(4) appropriate screening of all flight crews and persons transported aboard all-cargo aircraft;

(5) security procedures for cargo placed on all-cargo aircraft as provided in section 44901(f)(1)(B) of title 49, United States Code; and

(6) additional measures deemed necessary and appropriate by the Under Secretary.

(c) CONFIDENTIAL INDUSTRY REVIEW AND COMMENT.—

(1) CIRCULATION OF PROPOSED PROGRAM.—The Under Secretary shall—

(A) propose a program under subsection (a) within 90 days after the date of enactment of this Act; and

(B) distribute the proposed program, on a confidential basis, to those air carriers and other employers to which the program will apply.

(2) COMMENT PERIOD.—Any person to which the proposed program is distributed under paragraph (1) may provide comments on the proposed program to the Under Secretary not more than 60 days after it was received.

(3) FINAL PROGRAM.—The Under Secretary of Transportation shall issue a final program under subsection (a) not later than 90 days after the last date on which comments may be provided under paragraph (2). The final program shall contain time frames for the plans to be implemented by each air carrier or employer to which it applies.

(4) SUSPENSION OF PROCEDURAL NORMS.—Neither chapter 5 of title 5, United States Code, nor the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the program required by this section.

SEC. 7. REPORT ON PASSENGER PRESCREENING PROGRAM.

(a) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security, after consultation with the Attorney General, shall submit a report in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the potential impact of the Transportation Security Administration's proposed Computer Assisted Passenger Prescreening system, commonly known as CAPPS II, on the privacy and civil liberties of United States citizens.

(b) SPECIFIC ISSUES TO BE ADDRESSED.—The report shall address the following:

(1) Whether and for what period of time data gathered on individual travelers will be retained, who will have access to such data, and who will make decisions concerning access to such data.

(2) How the Transportation Security Administration will treat the scores assigned to individual travelers to measure the likelihood they may pose a security threat, including how long such scores will be retained and whether and under what circumstances they may be shared with other governmental, non-governmental, or commercial entities.

(3) The role airlines and outside vendors or contractors will have in implementing and operating the system, and to what extent will they have access, or the means to obtain access, to data, scores, or other information generated by the system.

(4) The safeguards that will be implemented to ensure that data, scores, or other information generated by the system will be used only as officially intended.

(5) The procedures that will be implemented to mitigate the effect of any errors, and what procedural recourse will be available to passengers who believe the system has wrongly barred them from taking flights.

(6) The oversight procedures that will be implemented to ensure that, on an ongoing basis, privacy and civil liberties issues will continue to be considered and addressed with high priority as the system is installed, operated and updated.

SEC. 8. MODIFICATION OF REQUIREMENTS REGARDING TRAINING TO OPERATE AIRCRAFT.

(a) IN GENERAL.—Section 44939 of title 49, United States Code, is amended to read as follows:

''§ 44939. Training to operate certain aircraft

''(a) IN GENERAL.—

''(1) WAITING PERIOD.—A person subject to regulation under this part may provide training in the United States in the operation of an aircraft to an individual who is an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) or to any other individual specified by the Under Secretary of Homeland Security for Border and Transportation Security only if—

''(A) that person has notified the Under Secretary that the individual has requested such training and furnished the Under Secretary with that individual's identification in such form as the Under Secretary may require; and

''(B) the Under Secretary has not directed, within 30 days after being notified under subparagraph (A), that person not to provide the requested training because the Under Secretary has determined that the individual presents a risk to aviation security or national security.

''(2) NOTIFICATION-ONLY INDIVIDUALS.—

''(A) IN GENERAL.—The requirements of paragraph (1) shall not apply to an an alien individual who holds a visa issued under title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and who—

''(i) has earned a Federal Aviation Administration type rating in an aircraft or has undergone type-specific training, or

''(ii) holds a current pilot's license or foreign equivalent commercial pilot's license that permits the person to fly an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds as defined by the International Civil Aviation Organization in Annex 1 to the Convention on International Civil Aviation,

if the person providing the training has notified the Under Secretary that the individual has requested such training and furnished the Under Secretary with that individual's visa information.

''(B) EXCEPTION.—Subparagraph (A) does not apply to an alien individual whose airman's certificate has been suspended or revoked under procedures established by the Under Secretary.

''(3) EXPEDITED PROCESSING.—The waiting period under paragraph (1) shall be expedited for an individual who—

''(A) has previously undergone a background records check by the Foreign Terrorist Tracking Task Force;

''(B) is employed by a foreign air carrier certified under part 129 of title 49, Code of Federal Regulations, that has a TSA 1546 approved security program and who is undergoing recurrent flight training;

''(C) is a foreign military pilot endorsed by the United States Department of Defense for flight training; or

''(D) who has unescorted access to a secured area of an airport designated under section 44936(a)(1)(A)(ii).

''(4) INVESTIGATION AUTHORITY.—In order to determine whether an individual requesting training described in paragraph (1) presents a risk to aviation security or national security the Under Secretary is authorized to use the employment investigation authority provided by section 44936(a)(1)(A) for individuals applying for a position in which the individual has unescorted access to a secured area of an airport designated under section 44936(a)(1)(A)(ii).

''(5) FEE.—

''(A) IN GENERAL.—The Under Secretary may assess a fee for an investigation under this section, which may not exceed $100 per individual (exclusive of the cost of transmitting fingerprints collected at overseas facilities) during fiscal years 2003 and 2004. For fiscal year 2005 and thereafter, the Under Secretary may adjust the maximum amount of the fee to reflect the costs of such an investigation.

''(B) OFFSET.—Notwithstanding section 3302 of title 31, United States Code, any fee collected under this section—

''(i) shall be credited to the account in the Treasury from which the expenses were incurred and shall be available to the Under Secretary for those expenses; and

''(ii) shall remain available until expended.

''(b) INTERRUPTION OF TRAINING.—If the Under Secretary, more than 30 days after receiving notification under subsection (a)(1)(A) from a person providing training described in subsection (a)(1) or at anytime after receiving notice from such a person under subsection (a)(2)(a), determines that an individual receiving such training presents a risk to aviation or national security, the Under Secretary shall immediately notify the person providing the training of the determination and that person shall immediately terminate the training.

''(c) COVERED TRAINING.—For purposes of subsection (a), the term –'training'—

''(1) includes in-flight training, training in a simulator, and any other form or aspect of training; but

''(2) does not include classroom instruction (also known as ground school training), which may be provided during the 30-day period described in subsection (a)(1)(B).

''(d) INTERAGENCY COOPERATION.—The Attorney General, the Director of Central Intelligence, and the Administrator of the Federal Aviation Administration shall cooperate with the Under Secretary in implementing this section.

''(e) SECURITY AWARENESS TRAINING FOR EMPLOYEES.—The Under Secretary shall require flight schools to conduct a security awareness program for flight school employees, and for certified instructors who provide instruction for the flight school but who are not employees thereof, to increase their awareness of suspicious circumstances and activities of individuals enrolling in or attending flight school.''.

(b) PROCEDURES.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Under Secretary of Homeland Security for Border and Transportation Security shall promulgate an interim final rule to implement section 44939 of title 49, United States Code, as amended by subsection (a).

(2) USE OF OVERSEAS FACILITIES.—In order to implement section 44939 of title 49, United States Code, as amended by subsection (a), United States Embassies and Consulates that possess appropriate fingerprint collection equipment and personnel certified to capture fingerprints shall provide fingerprint services to aliens covered by that section if the Under Secretary requires fingerprints in the administration of that section, and shall transmit the fingerprints to the Under Secretary or other agency designated by the Under Secretary. The Attorney General and the Secretary of State shall cooperate with the Under Secretary in carrying out this paragraph.

(3) USE OF UNITED STATES FACILITIES.—If the Under Secretary requires fingerprinting in the administration of section 44939 of title 49, United States Code, the Under Secretary may designate locations within the United States that will provide fingerprinting services to individuals covered by that section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on the effective date of the interim final rule required by subsection (b)(1).

(d) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the effectiveness of the activities carried out under section 44939 of title 49, United States Code, in reducing risks to aviation security and national security.

SEC. 9. PASSENGER IDENTIFICATION.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Under Secretary of Transportation for Security, in consultation with the Administrator of the Federal Aviation Administration, appropriate law enforcement, security, and terrorism experts, representatives of air carriers and labor organizations representing individuals employed in commercial aviation, shall develop guidelines to provide air carriers guidance for detecting false or fraudulent passenger identification. The guidelines may take into account new technology, current identification measures, training of personnel, and issues related to the types of identification available to the public. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any meeting held pursuant to this subsection.

(b) AIR CARRIER PROGRAMS.—Within 60 days after the Under Secretary issues the guidelines under subsection (a) in final form, the Under Secretary shall provide the guidelines to each air carrier and establish a joint government and industry council to develop recommendations on how to implement the guidelines.

(c) REPORT.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of this Act on the actions taken under this section.

SEC. 10. PASSENGER IDENTIFICATION VERIFICATION.

(a) PROGRAM REQUIRED.—The Under Secretary of Transportation for Security may establish and carry out a program to require the installation and use at airports in the United States of the identification verification technologies the Under Secretary considers appropriate to assist in the screening of passengers boarding aircraft at such airports.

(b) TECHNOLOGIES EMPLOYED.—The identification verification technologies required as part of the program under subsection (a) may include identification scanners, biometrics, retinal, iris, or facial scanners, or any other technologies that the Under Secretary considers appropriate for purposes of the program.

(c) COMMENCEMENT.—If the Under Secretary determines that the implementation of such a program is appropriate, the installation and use of identification verification technologies under the program shall commence as soon as practicable after the date of that determination.

SEC. 11. BLAST-RESISTANT CARGO CONTAINER TECHNOLOGY.

Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security, and the Administrator of the Federal Aviation Administration, shall jointly submit a report to Congress that contains—

(1) an evaluation of blast-resistant cargo container technology to protect against explosives in passenger luggage and cargo;

(2) an examination of the advantages associated with the technology in preventing damage and loss of aircraft from terrorist action and any operational impacts which may result from use of the technology (particularly added weight and costs);

(3) an analysis of whether alternatives exist to mitigate the impacts described in paragraph (2) and options available to pay for the technology; and

(4) recommendations on what further action, if any, should be taken with respect to the use of blast-resistant cargo containers on passenger aircraft.

SEC. 12. ARMING PILOTS AGAINST TERRORISM.

(a) FINDINGS AND PURPOSE.—

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

(A) During the 107th Congress, both the Senate and the House of Representatives overwhelmingly passed measures that would have armed pilots of cargo aircraft.

(B) Cargo aircraft do not have Federal air marshals, trained cabin crew, or determined passengers to subdue terrorists.

(C) Cockpit doors on cargo aircraft, if present at all, largely do not meet the security standards required for commercial passenger aircraft.

(D) Cargo aircraft vary in size and many are larger and carry larger amounts of fuel than the aircraft hijacked on September 11, 2001.

(E) Aircraft cargo frequently contains hazardous material and can contain deadly biological and chemical agents and quantities of agents that caused communicable diseases.

(F) Approximately 12,000 of the Nation's 90,000 commercial pilots serve as pilots and flight engineers on cargo aircraft.

(G) There are approximately 2,000 cargo flights per day in the United States, many of which are loaded with fuel for outbound international travel or are inbound from foreign airports not secured by the Transportation Security Administration.

(H) aircraft transporting cargo pose a serious risk as potential terrorist targets that could be used as weapons of mass destruction.

(I) Pilots of cargo aircraft deserve the same ability to protect themselves and the aircraft they pilot as other commercial airline pilots.

(J) Permitting pilots of cargo aircraft to carry firearms creates an important last line of defense against a terrorist effort to commandeer a cargo aircraft.

(2) SENSE OF CONGRESS.—It is the sense of Congress that a member of a flight deck crew of a cargo aircraft should be armed with a firearm to defend the cargo aircraft against an attack by terrorists that could result in the use of the aircraft as a weapon of mass destruction or for other terrorists purposes.

(b) ARMING CARGO PILOTS AGAINST TERRORISM.—Section 44921 of title 49, United States Code, is amended—

(1) by striking ''passenger'' in subsection (a) each place that it appears;

(2) by striking ''or,'' and all that follows in subsection (k)(2) and inserting ''or any other flight deck crew member.''; and

(3) by adding at the end of subsection (k) the following:

''(3) ALL-CARGO AIR TRANSPORTATION.—For the purposes of this section, the term air transportation includes all-cargo air transportation.''.

(c) IMPLEMENTATION.—

(1) TIME FOR IMPLEMENTATION.—The training of pilots as Federal flight deck officers required in the amendments made by subsection (b) shall begin as soon as practicable and no later than 90 days after the date of enactment of this Act.

(2) EFFECT ON OTHER LAWS.—The requirements of subparagraph (1) shall have no effect on the deadlines for implementation

contained in section 44921 of title 49, United States Code, as in effect on the day before the date of enactment of this Act.

SEC. 13. REPORT ON DEFENDING AIRCRAFT FROM MAN-PORTABLE AIR DEFENSE SYSTEMS (SHOULDER-FIRED MISSILES).

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall issue a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on how best to defend turbo and jet passenger aircraft from Man-Portable Air Defense Systems (shoulder-fired missiles).

(b) ISSUES TO BE ADDRESSED.—The report shall include an analysis of—

(1) actions taken to date, countermeasures, risk mitigation, and other activities;

(2) existing military countermeasure systems and how those systems might be adapted to commercial aircraft applications;

(3) means of reducing the costs of military countermeasure systems by modifying them for use on commercial aircraft; and

(4) the extent of the threat and the need for countermeasures.

(c) REPORT FORMAT.—The report may be submitted in classified form.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out this Act and sections 44901(f), 44922, and 44923 of title 49, United States Code, for fiscal years 2004 through 2008.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MOTHER'S DAY

Mr. BYRD. Mr. President, this coming Sunday is Mother's Day. For a few short hours, families will dust off a rarely used pedestal and attempt to pay homage to a woman who likely will hop right back off that pedestal in order to straighten her husband's tie, or apply a bandage to a skinned knee, or do one of the countless other small tasks that keep a mother's hands in perpetual motion.

This Sunday, families may try to still those busy hands by serving mom a homemade breakfast in bed or taking her to a nice restaurant for brunch. They will shower her with cards, and flowers, and presents in an attempt to say ''thank you, Mother'' for all of the hours that she has labored over them. The cards that are smudged with small blurry fingerpainted handprints will be especially savored, as will the bouquets of short-stemmed, wilting flowers plucked forcibly from weeds and beds in the backyard by loving and determined children, and presented in lumpy homemade vases painted with the wild abandon of childhood joy. Each gift and each gesture, whether suggested to a youngster by a loving husband or father or proffered by an awkward teenager who otherwise prefers his connection to the family be kept secret, will bring smiles, even tears, of gratitude.

On Sunday, mothers will revel in each moment, delight over each expression of caring, and give back tenfold, as they always do, the love offered from their most precious charge, their families.

It does not matter whether she is a business executive, an hourly laborer, or an unpaid stay-at-home mom—the best mothers invest the best of themselves in their families. They are high stakes brokers and we, their families, are the stocks on their exchange. They may spend many hours at work, but they still manage to make their children feel loved. They still manage to make each house a home. They still manage to create and sustain the traditions and customs that make each family unique. They enforce discipline on homework and at bedtime. They ice the birthday cakes and pack the lunches. They cool fevered brows and beam at graduations. They set high standards and higher expectations. They glory in our successes and consol us in our defeats. Like ripples in a pond, their investment spreads across the generations. The memories deep within each of us that connect us to our families are often closely linked to our mothers. From the food dishes that make each holiday special, to customs that range from the right way to fold clothes to the way we choose to raise our own children, our mother lives on in us. It is up to us to live up to our mother's expectations, to be the kind of adults she always believed we could be and would be. And if we simply try our best, she will consider the return on her investment to be well met.

I still remember, from growing up in a time when children memorized and recited poetry, particularly poetry that taught a lesson, the following poem by Margaret Johnston Grafflin:

LIKE MOTHER, LIKE SON

Do you know that your soul is of my soul such a part,
That you seem to be fibre and core of my heart?
None other can pain me as you, dear, can do,
None other can please me or praise me as you.

Remember the world will be quick with its blame,
If shadow or stain ever darken your name.
''Like mother, like son'' is a saying so true,
The world will judge largely the ''mother'' by you.

Be yours then the task, if task it shall be,
To force the proud world to do homage to me.
Be sure it will say, when its verdict you've won,
''She reaped as she sowed. Lo! This is her son.''

An old adage avers that ''As the twig is bent, so grows the tree.'' Countless studies have demonstrated the essential role that mothers play in family life, and their role in shaping the personality of their children, for good or for ill. I know from personal experience that a mother's influence reaches even beyond the grave. My own sweet mother died when I was just a year old, leaving me to be raised by my aunt and uncle. But my mother's serene face shone, and still shines, from a photograph that I keep in my office. Ada Kirby Sale: I have always felt her gentle presence, her soft urging to do my best to make her proud, to live the lesson of that poem.

She died of influenza in 1918, during the great pandemic that took many millions of lives worldwide, her final struggle that of ensuring her baby's fate, my fate. It was her wish that a particular aunt and uncle take me to raise. I had three older brothers and sister, but she wanted the Byrds, Titus Dalton and Vlurma Byrd, to have the baby, Robert. At that time my name was Cornelius Calvin Sale, Jr.

As concerns of a SARS epidemic sweeping the globe make today's headlines, I fear that other children may also be similarly orphaned. If that is the sad case, I hope that these children may also be able to keep their mother's memory and influence with them throughout their lives, as I have been fortunate to do.

You see, I do not remember ever having seen that mother. But it is as though she were there beside me often. I feel that I am here because of that mother's wish, and I feel that she is watching today. I hope that other members of their families will be so willing to take them in and raise them as their mothers would have wished, as my Aunt Vlurma and my Uncle Titus Dalton Byrd did for me. They took me in. They gave me a new name to share with them and to be proud of, and they brought me to the land of my heart, if not my birth, West Virginia.

West Virginia is the birthplace of my wife, Erma Ora Byrd. As I have said before, and I am happy to say again and again, she is a wonderful mother, a wonderful grandmother and great-grandmother. The ripples of her influence have spread now to the third generation. Erma and I are proud parents, grandparents, and now great-grandparents of a brood of fine people, individuals that distinguish any group. Erma's investment in her family has paid off a hundredfold.

Good mothers are so special—you know that; you know that; you know that—so essential to our families and our society that I am especially gratified that the U.S. national celebration of mothers has its own origins in the town of Grafton in Taylor County, WV. The only surprise is that it is such a recent holiday, first established in 1907, when Ms. Anna Jarvis of Philadelphia persuaded her mother's church, which was in Grafton, WV, to celebrate Mother's Day on the second anniversary of her mother's death on the second Sunday in May. By the next year, Mother's

Day was also being celebrated in Philadelphia.

By 1911, thanks to the efforts of Anna Jarvis and her supporters, Mother's Day was being celebrated in almost every State—there were only 46 of them in 1911. In 1914, President Woodrow Wilson made the official announcement proclaiming Mother's Day a national holiday, to be held on the second Sunday in May each year. It is a tribute to Anna Jarvis's mother that her daughter was so inspired and so persevering. It is an equal tribute to countless other wonderful mothers that Anna Jarvis's good idea spread so quickly. Today, Mother's Day is celebrated throughout the United States and in many other nations as well.

Mother's Day sprang from a loving and loyal heart, not from the avarice of any executive of the greeting card industry, the floral delivery service, the chocolate candy manufacturers, or the restaurant business. And despite all of the advertising these days aimed at getting grateful families to spend money on ever-more extravagant gifts for Mother's Day, the warm and caring feelings that inspired the day remain central to the observance. I know economists would like to see more spending to boost the economy, but I am also sure that for most mothers, the best part of the day is the time spent with their families. The hugs and laughter of her children, the pride in them that she shares with her husband—these are the gems in the mother's crown and the gold in mother's vault.

This Sunday, as each of us calls or visits our mother, or pauses to hold close her dear memory, we can savor the warmth and caring of her hugs and the special accolade that was her smile of pride.

I close with another old poem, by Elizabeth Akers Allen, that for me is forever linked with Mother's Day: ''Rock Me to Sleep.'' I will offer it up to my own angel mother and to all other mothers who are angels as well.

ROCK ME TO SLEEP

Backward, turn backward, O time, in your flight,
Make me a child again just for to-night!
Mother, come back from the echoless shore,
Take me again in your heart as of yore;
Kiss from my forehead the furrows of care,
Smooth the few silver threads out of my hair;
Over my slumbers your loving watch keep:—
Rock me to sleep, Mother—rock me to sleep!

Backward, flow backward, oh, tide of the years!
I am so weary of toil and of tears—
Toil without recompense, tears all in vain—
Take them, and give me my childhood again!
I have grown weary of dust and decay—
Weary of flinging my soul-wealth away;
Weary of sowing for others to reap;—
Rock me to sleep, Mother—rock me to sleep!

Tired of the hollow, the base, the untrue,
Mother, O Mother, my heart call for you!
Many a summer the grass has grown green,
Blossomed and faded, our faces between:
Yet, with strong yearning and passionate pain,
Long I to-night for your presence again.
Come from the silence so long and so deep;—
Rock me to sleep, Mother—rock me to sleep!

Over my heart, in the days that are flown,
No love like mother-love ever has shone;
No other worship abides and endures—
Faithful, unselfish, and patient like yours:
None like a mother can charm away pain
From the sick soul and the world-weary brain.
Slumber's soft calms o'er my heavy lids creep;—
Rock me to sleep, Mother—rock me to sleep!

Come, let your brown hair, just lighted with gold,
Fall on your shoulders again as of old;
Let it drop over my forehead to-night,
Shading my faint eyes away from the light;
For with its sunny-edged shadows once more
Haply will throng the sweet visions of yore;
Lovingly, softly, its bright billows sweep;—
Rock me to sleep, Mother—rock me to sleep!

Mother, dear Mother, the years have been long
Since I last listened your lullaby song:
Sing, then, and unto my soul it shall seen
Womanhood's years have been only a dream.
Clasped to your heart in a loving embrace,
With your light lashes just sweeping my face,
Never hereafter to wake or to weep;—
Rock me to sleep, Mother—rock me to sleep!

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

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

HONORING THE 2003 AAA SCHOOL SAFETY PATROL LIFESAVING MEDAL AWARD WINNERS AND THE AAA NATIONAL PATROLLER OF THE YEAR

Mr. DASCHLE. Mr. President, I am proud to announce to the Senate today the names of the young men and women who were selected to receive special awards from the American Automobile Association. Four safety patrollers received the 2003 AAA School Safety Patrol Lifesaving Medal Award, the highest honor given to members of the school safety patrol. Another safety patroller received the special honor of the AAA National Patroller of the Year. They received their awards this past Sunday, May 4, and I wanted to say how proud we are of them

There are roughly 500,000 members of the AAA School Safety Patrol in this country, helping in over 50,000 schools. Every day, these young people ensure that their peers arrive safely at school in the morning, and back home in the afternoon.

Most of the time, they accomplish their jobs uneventfully. But, on occasion, these volunteers must make split second decisions, placing themselves in harm's way to save the lives of others. The heroic actions of this year's recipients exemplify this selflessness.

The first AAA Lifesaving Medal recipient comes from Deshler, OH. Her name is Sadie Peters.

On the afternoon of May 2, 2002, Sadie, age 12, was on patrol assisting fellow students with crossing a busy intersection at Deshler Elementary School.

Kaydi McGill, a three-year old girl, was with her grandmother at the intersection when Kaydi wandered away from the older woman into the path of an oncoming semi-truck. Seeing that Kaydi was in danger, Sadie immediately threw down her patrol flag and sprang toward Kaydi, grabbing her from in front of the semi-truck.

This year's second AAA Lifesaving Medal honoree comes from Lancaster, OH.

Cody Byers, age 13, was on morning duty at Fairfield Christian Academy on January 22 overseeing a crosswalk with heavy pedestrian traffic. The two traffic lanes in front of the school were filled with cars dropping off students for class.

Cody's safety patrol advisor, Mark Zeitman, saw a first grade student race out of the school and head into traffic. he called out to Cody, who took off after her and grabbed the youngster by the coat collar just before she ran into the street.

The next AAA Lifesaving Medal winners come from Burke, VA.

On the morning of November 1, 2002, Michael Butters, age 12, was at his post at Holy Spirit School, monitoring a busy traffic circle where children are dropped off. Suddenly, Michael heard a teacher yell, ''Get her!''

A little girl had been playing a game of chase with her friends when she broke away from the group. Not looking where she was running, she headed right for the drop off area. Without hesitating, Michael ran to the little girl and grabbed her backpack, saving her from being hit by a car.

In addition to honoring safety patrollers with the Lifesaving Medal Award, AAA also recognizes the School Safety Patroller of the Year. This award is presented to patrollers who perform duties above and beyond their normal responsibilities and demonstrate outstanding leadership, dependability, and academic strength.

This year, the Safety Patroller of the Year goes to Kaaren Hatlen, age 11, Safety Patrol Captain at Bear Creek Elementary in Woodinville, WA.

Kaaren has been a member of the Bear Creek Elementary School Safety Patrol for the past 2 years. She established herself as a leader early on and this year was selected as a captain of her safety patrol. She was also selected for several leadership responsibilities, including the newly created post of captain of Kindergarten Duty and team leader for the sixth grade salmon tank.

Kaaren is always the first to volunteer to fill in for absent patrol members, even in the worst weather. She looks for potentially dangerous situations and corrects problem before trouble can occur.

Kaaren is involved in school volleyball, math olympiad, chorus,

band and the drama club. She participates in caroling at nursing homes, and makes crafts, food and toy drives for Hopelink, a local nonprofit organization. She is very active in the reading tutoring program, often giving up her lunch recess to help others learn to be successful readers. Kaaren is also an active member of her church and local Girl Scout Troop and enjoys playing soccer, softball, basketball and swimming.

She and all of the other AAA winners deserve our thanks and applause.

On behalf of the Senate, I extend congratulations and thanks to these young men and women. They are assets to their communities, and their families and neighbors should be very proud of their courage and dedication.

I would also like to recognize the American Automobile Association for providing the supplies and training necessary to keep the safety patrol on duty nationwide.

Since the 1920s, AAA clubs across the country have sponsored student safety patrols to guide and protect younger classmates against traffic accidents. Easily recognizable by their fluorescent orange safety belt and shoulder strap, safety patrol members represent the very best of their schools and communities. Experts credit school safety patrol programs with helping to lower the number of traffic accidents and fatalities involving young children.

We owe AAA our gratitude for their tireless efforts to ensure that our Nation's children arrive to and from school safe and sound. And we owe our thanks to these exceptional young men and women for their selfless actions. The discipline and courage they displayed deserves the praise and recognition of their schools, their communities and the Nation.

GAMING LAW POLICY

Mr. REID. Mr. President, last month I had the wonderful opportunity to speak to students in a gaming law policy class at the William S. Boyd School of Law at the University of Nevada, Las Vegas. As I am sure you are aware, yesterday the Senator from Arizona reintroduced legislation that would make it illegal to wager on college sports in Nevada, where it is legal and heavily regulated. The legislation will not solve the problems the sponsors of the legislation seek to solve. Recently, I received a letter from several students in the class who have done a great deal of research on the subject. I share the views they have, and I ask unanimous consent to print their letter in today's RECORD.

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

WILLIAM S. BOYD SCHOOL OF LAW,
UNIVERSITY OF NEVADA AT LAS VEGAS
Las Vegas, NV, April 24, 2003.

Hon. HARRY REID,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR REID: We write to you as members of the Gaming Law Policy Class at the William S. Boyd School of Law at the University of Nevada at Las Vegas. Our class includes students from states that have no legal gaming, such as Hawaii. One of the topics that our class has researched this semester, under the direction of Adjunct Professors Tony Cabot and Bob Faiss, is congressional legislation that would outlaw collegiate sports wagering in Nevada casinos. After researching this matter in detail, we have come to the conclusion that such legislation would not effectively address the problem that its proponents are trying to correct.

We recognize this is the conclusion that you and the other members of Nevada's congressional delegation have also reached in your consideration of this subject. We have reviewed the legislation that you co-sponsored with Senator John Ensign during the last Congress and agree that this approach would do much more to eradicate the problems created by illegal sports wagering on college campuses.

Based on our in-depth analysis of this subject, we felt compelled to send this formal expression of support for your efforts. Our letter is not to be considered an official expression of the law school. We have prepared it as individuals sharing a common view.

Our examination of this subject has led us to the following conclusions:

1. Banning collegiate sports wagering in Nevada would do nothing to eradicate or reduce illegal collegiate sports wagering. Banning gambling in Nevada is unlikely to end any illegal gambling on college athletics. The amount of wagering that takes place on collegiate sport wagering in Nevada is a minuscule fraction of the overall amount of wagering that takes place nationally. The money wagered in Nevada on college athletics would flow to the domestic black market or to offshore Internet gaming companies.

2. Nevada casinos actually assist law enforcement in exposing illegal gambling schemes. Nevada sports books have a proven record of uncovering suspicious gambling activity. Absent the scrutiny of Nevada sports books, law enforcement would have no real-time monitor on unusual wagering trends.

3. Nevada collegiate sports wagering is not the problem. The money that is legally wagered in Nevada on college athletics is only two percent of the estimated total amount waged on college athletics across the country. The proponents of legislation to outlaw collegiate sports wagering in Nevada have presented no credible evidence that legal wagering in Nevada is the cause of the problems such legislation is attempting to correct.

4. The idea that Nevada encourages illegal wagering throughout the rest of the country is without any factual support. As stated, such wagering in Nevada comprises a very small percentage of the total amount of wagering that occurs. Newspapers, including USA Today, are on record as stating that they will publish betting odds and point-spreads regardless of whether wagering on college athletics is legal. Offshore Internet sites would also continue to publish betting odds and point-spreads.

5. Nevada sports book operators are highly regulated and subject to intense scrutiny. Nevada sports book operators have never been involved in a point-shaving scandal.

In conclusion, our research shows that banning regulated wagering on college athletics in Nevada will not address the problem of the influence of illegal wagering on student-athletes and will, in fact, remove a tool that law enforcement has to expose illegal betting schemes.

We therefore hope that others members of the Congress will support the common-sense approach taken by you and the other members of the Nevada delegation to address the problem of illegal wagering on college athletics.

Respectfull,

Jeremy Aguero, Kevin Bumstead, Anthony Celeste, Zachary Fritz, Edward Magaw, Nathan Miller, Shannon Okada, Jennifer Stallard, Douglas Walker, Members of the 2003 Gaming Law Policy Class.

Anthony Celeste, Nathan Miller, Student Project Chairmen.

HONORING OUR ARMED FORCES

Mr. ALLEN. Mr. President, I rise today to honor a great American, a great patriot, a courageous Airman, husband and father, LTC William Watkins III of Halifax County, VA.

Lieutenant Colonel Watkins fought so that our families—all Americans—could lead our lives and freedoms in greater security. His mission was noble—and embodies the absolute greatest of the American ideas.

Lieutenant Colonel Watkins' F–15 went down on April 7 near Tikrit, Iraq. His courageous actions contributed to the success of our mission—the prevention of the spread of weapons of mass destruction, and the permanent removal of the heavy boot of oppression from the throats of the Iraqi people.

Lieutenant Colonel Watkins left his home and family to travel around the world to liberate an oppressed people—most whom he had never met. There was no personal benefit, there was no monetary reward.

When Lieutenant Colonel Watkins was called to action, he knew the mission, the purpose and the goal was larger than one man. He answered his country's call with a simple, ''yes sir''—steady in his love for the cause of freedom.

Shortly after Lieutenant Colonel Watkins death, The Danville Register and Bee, his hometown paper, aptly noted:

> We live in a safe, free and prosperous country because men like Watkins have always been willing to sacrifice their lives to protect the birthright of every American. It is a sacrifice made on behalf of millions of people who don't have to risk anything . . . Watkins' sacrifice on behalf of freedom will help protect many lives in the future. The world was better with Watkins in it, and it is safer because he was willing to fight to make it that way.

Truer words were never written.

William Watkins was recently promoted to lieutenant colonel. A promotion well deserved. He graduated from the U.S. Naval academy in 1989 and served as a flight officer in the Navy for 12 years. In 2001, he transferred to the Air Force to continue his service to his country—where he served as a weapons system officer. He loved this country.

Serving our country wasn't something Lieutenant Colonel Watkins ''did.'' It was something he lived. His wife, Major Melissa Watkins, continues to serve our country as an intelligence officer. And while we will never know

her and her children's loss or pain, we continue to hold them in prayer and support them in all ways possible.

No tribute, no speech will replace Lieutenant Colonel Watkins. His children will grow up never knowing this truly great American. He will be missed. And, while it certainly does not fill the void left by his death, the greatest tribute to his life can be summed up by one act, one moment that will live in each of our memories forever.

It is the moment that a free Iraqi people, liberated from the chains of oppression, gathered in central Baghdad, breathed their first breaths of freedom and tore down the statue of the vile, ruthless dictator Saddam Hussein.

So, each time we see that footage of that historic event, each time we hear of the end of Saddam's ruthless, torturous regime, each time an Iraqi speaks their mind, we should, we must, remember the sacrifices of great, giving American servicemen and women like LTC William Watkins.

May he rest in peace, knowing how grateful we are and that we will support his family.

REQUEST FOR SEQUENTIAL REFERRAL—S. 1035

Mr. WARNER. Mr. President, I ask unanimous consent a letter to the honorable BILL FRIST be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, May 8, 2003.

Hon. BILL FRIST,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR MR. LEADER: Pursuant to section 3(b) of S. Res. 400 of the 94th Congress, I request that S. 1025, the Intelligence Authorization Act for Fiscal Year 2004, which was reported out on May 8, 2003, by the Select Committee on Intelligence, be sequentially referred to the Committee on Armed Services for a period not to exceed thirty days of session.

With kind regards, I am

Sincerely,

JOHN WARNER,
Chairman.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred September 19, 2001 in New York, NY. A 30 year-old Muslim man was assaulted by a group of six to eight men. The attackers shouted anti-Arab insults and pelted him with stones. The attackers fled before authorities could apprehend them.

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.

TAKE OUR DAUGHTERS TO WORK DAY

Ms. LANDRIEU. Mr. President, as you walk the halls of the Senate today, you may have noticed many young and bright faces. Today, we are celebrating the 11th anniversary of ''Take Our Daughters to Work Day.'' Senator Hutchinson and I have been pleased to oversee today's activities with our colleagues.

Over 11 million girls ages 9 to 15 are spending today with their parents, relatives, friends, neighbors, and other mentors experiencing the wide range of careers the world has to offer.

Since 1993, 82 million young women and some young men have participated in this outstanding program. According to a recent poll commissioned by the Ms. Foundation for Women, girls believe the program increased their interest in education, broadened their thinking about the future, and strengthened their relationship with their parents and other caring adults.

This morning's Senate activities began with a breakfast and a tour of the Senate floor for approximately 200 girls and their sponsors, many of them Senate staff members and assistants who wanted to share with their girls the excitement and challenges of working in our Nation's Capitol, and in particular, here in the Senate.

This year, I am happy to host 19 young ladies, all with very promising futures, many from my home State of Louisiana. Please welcome: Miss Leslie Ann Leavoy of DeRidder, LA; Miss Monica Manning of Conyers, GA; Miss Sofia Gold of Chevy Chase, MD; Miss Nicoleta Koha and Miss Joyanna Malutinok of Lexington, MA; Miss Eliza Shaw, Miss Molly Claire Shaw, Miss Lindsey McDonough, Miss Allison McDonough, Miss Janie Abernathy, and Miss Kerry Garikes of Washington, DC; Miss Adrienne Lewis and Miss Megan Johnson of Baton Rouge, LA; Miss Caroline Mitchell of Mandeville, LA; Miss Jillian Baker of McLean, VA; Miss Taylor Denson and Miss Emma Caffery of New Orleans, LA; Miss Lena Jones of Fort Gordon, GA; and Miss Katy Magruder of Maitland, FL.

In closing, I would like to thank the Ms. Foundation the founder and organizer of this outstanding program that has impacted in a very positive way the lives of millions of girls and has become a tradition for thousands of workplaces around the country.

IN HONOR OF NATIONAL NURSES WEEK 2003

Mr. SANTORUM. Mr. President, I rise today in recognition of National Nurses Week, celebrated this year from May 5 through May 12. Our annual tribute to the women and men who give comfort to the ill and injured across the country reminds us that nurses stand daily on the front lines of the health care profession. This year, however, we should also be reminded of the brave nursing professionals who serve on and behind the front lines of battle: America's military nurses. With our campaign in Iraq coming to a close, it is fitting to honor the patriots who mend and support our Armed Forces in the field, in addition to those who keep us healthy at home.

The first official military nurse corps in the United States was established in the Army at the turn of the last century. American women, however, had served as combat nurses in every major conflict since the Revolutionary War and, until the creation of the Army Nurse Corps, did so without recognition and as volunteers. In grade school we learned the story of Clara Barton and the gracious care she gave to soldiers wounded in the Civil War. But there were many women throughout American history—quite often the wives, mothers, daughters, and sisters of military men—who took up the role of nurse and treated the injured. They were compelled by genuine concern, kindness, and patriotism, and they used whatever supplies were available to them in their homes and neighborhoods.

In the First and Second World Wars, nursing was the predominant service women were allowed to perform as participating members of the military. During these wars and in conflicts since, nurses have sacrificed their safety and, at times, their lives in serving overseas as medical professionals. Here in our Nation's Capital, as part of the Vietnam Memorial on the National Mall, there is a very poignant statue dedicated to the nurses who joined our troops in Southeast Asia. The image illustrates the important integration of medical care givers in successful military operations and the strength of these women who traveled to Vietnam and faced the same dangers and perils our soldiers did. In the gulf war, Afghanistan, and Iraq, military nurses have continued to exhibit this resolve and calm while tending to our Armed Forces. For a wounded soldier abroad, I can imagine no greater comfort.

My appreciation for those who serve our communities and our Nation through the nursing profession stems from my experiences growing up on the campus of a Veterans Administration, VA, hospital. Additionally, my mother, sister, and wife all have nursing backgrounds and I have witnessed their commitment to quality health care and to their patients throughout my life. As we honor the women and men who are dedicated to this profession in clinics, hospitals, and VA facilities across

the country, we also honor those nurses who are themselves veterans. They are soldiers of a different, yet equally brave, stripe and they are certainly heroes to the wounded troops they help to bring home. I hope my Senate colleagues will join me in recognizing and thanking America's nurses, military and civilian, for the incredible, indispensable, and courageous work they do.

Mr. NELSON of Nebraska. I commend the 20,000 registered nurses working in Nebraska as we celebrate National Nurses Week. From May 6–12, we recognize the diverse ways in which registered nurses, the largest health care profession, are working to improve health care. From bedside nursing in hospitals and long-term care facilities to the halls of research institutions, State legislatures, and Congress, the depth and breadth of the nursing profession is meeting the expanding health care needs of American society.

I also urge more Nebraskans to consider nursing as a career. Although nursing is one of the most noble professions, more nurses are desperately needed. The Department of Health and Human Services predicts that the number of nursing vacancies nationwide will rise from its current total of 126,000 to 275,000 in 2010. The shortage of nurses in Nebraska is also reaching epidemic proportions, with one in 10 nursing positions unfilled.

My colleagues and I want to provide more educational opportunities for people who want to become nurses. In response to the national nursing shortage, the Nurse Reinvestment Act of 2002 was signed into law in August 2002. The Nurse Reinvestment Act provides scholarships to nursing students who agree to provide 2 years of service in a health care facility with a critical nursing shortage. It also allows for the canceling of up to 85 percent of a student's graduate studies loans if they later teach at a school of nursing. The act also provides grants to improve nurse education, practice, and retention as well as a program for training and education in geriatric care that will enable nurses to better serve the growing population of older Americans. State and national public service announcements will promote nursing and raise awareness of the financial assistance that is available.

A loan forgiveness program is also available. The Nurse Education Loan Repayment Program will pay 60 percent, or up to $30,000, of an RN's student loan balance in exchange for 2 years of service. If an eligible participant elects to stay for another year, an additional 25 percent of the loan, or up to $7500, will be repaid.

Nebraska also has a loan forgiveness program for nursing students. A limited amount of $1,000 loans are awarded each year. The loan is forgiven if the graduate practices nursing in Nebraska for at least 1 year following graduation.

Again, I commend the work of Nebraska's nurses and send my best wishes during National Nurses Week.

FLORIDA VETERANS MOBILE SERVICE CENTER COMES TO THE HILL

Mr. GRAHAM of Florida. Mr. President, I am enormously proud that on Tuesday, the Florida Veterans Mobile Service Center came to Capitol Hill as part of the National Coalition for Homeless Veterans Annual Membership Meeting and Conference.

The Florida Veterans Mobile Service Center is a 40-foot van equipped with two exam rooms, as well as facilities for dental care. The Center travels the State of Florida providing care to homeless veterans who live in rural encampments. The unit offers homeless veterans immediate assistance of food and clothing, health screening and assessment, VA benefit determination and counseling, as well as assessment of housing, mental health, substance abuse, employment, educational and vocational needs. That the Center is mobile, allows its team—comprised of staff from Volunteers of America and Department of Veterans Affairs—to go where their assistance is most needed.

This community service provider offers homeless veterans a unique way to receive quality care while still ensuring their sense of dignity and respect. I take pride in the fact that my State offers this initiative, effective source of help to our Nation's veterans. We all owe those who risked their lives defending this country a debt of gratitude, and I am so thankful to the Center's hardworking, compassionate team for doing their part in paying that debt.

I especially want to point out the dedication of Scott Martin, who drove more than 900 miles to bring the Florida Veterans Mobile Service Center from Tampa, FL, to Washington, DC. I also would like to thank Kathryn Spearman, president and CEO of Volunteers of America of Florida, Ray Tuller, chief financial officer of Volunteers of America of Florida, and Ed Quill, director of external affairs for Volunteers of America of Florida, all of whom joined Scott here in Washington.

ADDITIONAL STATEMENTS

TRIBUTE TO MARLENE PERLING

• Mr. COLEMAN. Mr. President, I ask that the following article recognizing the generosity of Marlene Perling toward Zachary Wood and his family be printed in the RECORD.

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

[From the Duluth News Tribune, May 8, 2003]

A STRANGER . . . A BOY . . . A GIFT; A WIDOW'S OFFER TO THE FAMILY OF A DISABLED 10-YEAR-OLD FULFILLS HER WISH AND ZACHARY WOOD'S DREAM

(By Chuck Frederick)

INTERNATIONAL FALLS, MINN.—Fourth-grader Zachary Wood and his family are still numb, perhaps from pinching themselves so much.

Two weeks ago, Zachary's dad, Terry Wood, was raking the yard when a neighbor dropped by, wondering if the family was interested in a used van with a wheelchair lift. Zachary has spina bifida and has used a wheelchair since he was a toddler. A new van with a lift was definitely in the family's future—perhaps next year, Terry Wood thought, when their current car was paid off.

The neighbor leaned in.

''You really should take a look at this van,'' he said. ''I think you can get a really good deal.''

So Terry Wood hoisted Zachary, 10, into the family car as his wife, Tammy, and 15-year-old daughter, Jenna, hopped in. They motored to nearby Rainy Lake. It was a nice van—full-size Ford, motorized lift, low miles and no rust.

''I'm supposed to show you the pontoon boat and house, too,'' said the Woods' neighbor, a cousin of the home's owner.

''Uh, sure,'' said the Woods, a bit puzzled. But they decided not to pass up a chance to check out a beautiful lakefront property.

The boat and the house were, like the van, equipped with ramps and sturdy, level surfaces that made it easy for Zachary to get around. He wheeled across wide decks with breathtaking lake vistas. Inside, he rolled under knotty pine ceilings. The house even had an elevator.

''It's fantastic. Thanks for the tour,'' Terry Wood said. He started to ask about the van and its price, but the neighbor interrupted.

''Now, couldn't you kids just picture yourself living here?'' he asked.

''Yeah, right, in our dreams,'' said Terry Wood, an International Falls police officer for 13 years.

''Maybe if we win the lottery,'' said Tammy Wood, who works at Rainy Lake Community College.

The both laughed, but sometimes dreams come true.

SUMMERS ON THE LAKE

David Perling was born in International Falls and grew up in Iowa. When he was 15, he and some buddies were goofing around on a wagon, throwing hay at each other. Perling weaved to the side to avoid an attack, but lost his balance and crashed to the ground. The wagon rolled over him twice, paralyzing him.

He went on to become an electrical engineer. Six years ago, he and his wife decided they wanted to spend summers back in his hometown and on Rainy Lake. His late uncle's place was available. It would be perfect for escaping the triple-digit heat in Arizona, where David and Marlene Perling lived for more than three decades.

They lived at Rainy Lake for six straight summers. It was their place. The sun rises over Canada. The loons call.

They planned to return this summer, too. But in January, David Perling suffered a stroke and died. He was 61.

A Rainy Lake neighbor called Marlene Perling in the spring about buying the lakefront place. She didn't know what to say.

''I can never put a price on this house. To me it's just priceless,'' she said. ''But I also know that I could never come up without David. I cried a ton of tears. I knew I just couldn't sell this place.''

She prayed for an answer. And then it came to her.

''I decided I wanted to give it to a family who could benefit from it, who could enjoy it as much as David and I enjoyed it those six years,'' she said. ''That's what I decided I wanted to do. It was all a very sudden thing, but it's also the right thing.''

Marlene Perling's cousin Dorlyn Desens of International Falls heard of her intentions. He immediately thought of the nice family living across the street. How many times had he seen the father lift the little boy from his wheelchair to place him in the car? How much longer could his back tolerate the strain?

Desens spotted Terry Wood outside raking. He went over to chat.

DREAM BECOMES REAL

At the lake house two weeks ago, Desens put Terry and Tammy Wood on the phone with his cousin.

''How do you like the van?'' Marlene Perling asked.

''The rest of the conversation is a blur to me,'' Terry Wood said Tuesday. He agreed it went something like this:

The Woods: ''Very nice. But we're not sure we can buy it right now. We're still paying off our car and we just built a house.'' Their house in town is 2½ years old.

Perling: ''Well then, just take it.''

The Woods: ''What do you mean? Just take the van?''

Perling: ''Take it all. The house. The boat. The van. It's all free. I just want you to enjoy it. Please enjoy it.''

''That's when our knees started shaking and Tammy started crying,'' Terry Wood said. ''It's a pretty incredible story, huh? We're still floating.''

''I know it's meant to be,'' Perling said. ''God orchestrated this whole thing. He took me step by step. He led me to this family. I asked God to show me a family who could benefit from this. They are all that and more.''

ZACHARY CAN'T WAIT

Zachary is most eager to go fishing with his grandfather. The boy has had 29 surgeries since birth. His spinal cord never developed completely. He suffers respiratory problems, and his vocal cords are paralyzed.

His prognosis is good, however; he's expected to lead a full life, his parents said.

But he has never been able to get in a boat with his grandfather until now.

On Monday, Marlene Perling and the Woods gathered in a lawyer's office in International Falls. She signed over the deed. She even decided to leave behind all the leather and woodsy moose-motif furniture. It was too much of a hassle to take back to Arizona, she said; the moving company wanted more than $7,000.

The Woods plan to move into their new home after school lets out. With the place fully furnished, they plan to keep only their most cherished possessions.

The rest?

''Give it away,'' Tammy Wood said.●

OREGON HEALTH CARE HERO

● Mr. SMITH. Mr. President, I rise today to salute Oregonian Laure Trickel, a coronary care nurse who is saving the lives of Oregon teenagers through her Heart Ready High Schools Program. Because Laure saw an impending health threat in Oregon schools, envisioned a solution and made every effort to implement her plan, she is an Oregon ''Health Care Hero.''

Over the past few years, Oregonians have seen several cardiac events threaten the lives of Oregon teenagers during school-sponsored sporting events. Tragically, we have lost more than one treasured teen to an unexpected heart attack on the fields and courts of our schools.

Two cardiac events occurred at Ashland High School in Laure Trickel's southern Oregon hometown. As a coronary care nurse, Laure quickly saw that high schools were simply not prepared to deal with these events, where time is of the essence and technology is critical to saving lives. In Laure's own words, ''Although a high school could be as prepared as possible for a person with a weapon of violence, it was not at all prepared for the number one killer of Americans: heart disease and sudden cardiac arrest.''

In response, Laure created the Heart Ready High Schools Program, asking local hospitals to donate automated external defibrillators, AED, to local high schools. She also asked the hospitals to provide training for staff and students, to ensure that the school would be ready to effectively respond in an emergency should another tragedy occur.

After the first donation by Ashland Community Hospital, several other Oregon hospitals caught Laure's vision and decided to help. I join the parents of students at Ashland, Crater, Eagle Point, Butte Falls, and Prospect high schools in thanking Ashland Community Hospital, Rogue Valley Medical Center, the Children's Miracle Network, Providence, and Medford Medical Center for making these lifesaving devices and training available. Since that time, Merle West Medical Center and the KMSB Foundation have provided similar equipment and skill training to three Klamath Falls high schools, spreading this critical program further across our State.

These are difficult financial times for both schools and hospitals, and I applaud these community hospitals for responding to this great need with their time and limited funds. Many Oregon students will owe their lives to the quick emergency treatment they will receive should a cardiac event occur.

Most of all, I am grateful to Laure Trickel for finding a way to prevent needless death among Oregon students. Making a difference requires vision, great courage, a willingness to ask for help, and following through. Laure has done all these things, and we owe her our great thanks. She is a true ''Health Care Hero'' for Oregon.●

CELEBRATING THE 10TH ANNIVERSARY OF THE REVLON RUN/WALK FOR WOMEN IN LOS ANGELES

● Mrs. FEINSTEIN. Mr. President, today I rise to recognize the efforts of the more than 60,000 men, women, and children who will be meeting at the Los Angeles Memorial Coliseum at Exposition Park on Saturday, May 10, 2003, to celebrate the 10th anniversary of the Revlon Run/Walk and to raise funds for women's cancers. The largest 5K event in the Nation, the Revlon Run/Walk, presented by the Entertainment Industry Foundation, EFT, and cochaired by Ellen Barkin, Ronald O. Perelman and Lilly Tartikoff, will raise funds to target research that will contribute to the development of important new therapies, such as Herceptin to treat breast cancer, the first in the wave of new targeted cancer treatments.

To date, the Revlon Run/Walk in Los Angeles and New York has raised more than $27 million since its beginning in Los Angeles a decade ago. The Revlon Run/Walk in Los Angeles will be hosted by Debra Messing and Billy Crystal along with Revlon spokespersons Karen Duffy and Jaime King.

The Los Angeles area beneficiaries for 2003 include: The Revlon/UCLA Women's Cancer Research Program, National Women's Cancer Research Alliance (NWCRA), the Wellness Community, WIN Against Breast Cancer, USC/Norris Comprehensive Cancer Center and Hospital Ovarian & Breast Cancer Program, the UCLA Digital Mammography Program, T.H.E., The Help Everyone, Clinic, Inc., Los Angeles Breast Cancer Alliance, John Wayne Cancer Institute, Breast Cancer Research Program, Women of Color Breast Cancer Survivors Support Program, Team Survivor Los Angeles, Providence Saint Joseph Foundation, Art of Healing—Women's Health, Gilda Radner Ovarian and Breast Cancer Detection Program at Cedars Sinai Medical Center, Asian Pacific Health Care Venture, Inc. (ACPHCV), and weSpark.

Today, 1 in 27 American women will die of breast cancer. According to the American Cancer Society, every 2.5 minutes a woman is diagnosed with breast cancer, every 13 minutes a woman dies of breast cancer, and this year alone 54,100 women will lose their lives to breast and ovarian cancer. For a woman with ovarian cancer today, there is still no method of early detection.

In my home State of California, the American Cancer Society is predicting this year that more than 26,300 women will be diagnosed with breast and other women cancers and more than 5,500 grandmothers, mothers, wives, daughters, sisters, cousins, and friends will die.

The facts serve as a reminder that there is still so much to be done. Mammograms are a proven method of early detection. Unfortunately a large portion of women are not getting screened.

The continuing fight requires many levels of commitment and I want to congratulate all those individuals involved in this worthwhile event as they celebrate both Mother's Day and the 10-year anniversary of the Revlon Run/Walk. The thousands running in Los

Angeles represent the millions hoping for an end to cancer. I, too, look forward to a day without cancer.●

ASIAN-PACIFIC AMERICAN HERITAGE MONTH

● Mr. DAYTON. Mr. President, today, I rise to speak about the importance of the Asian-Pacific American experience in my home State of Minnesota. During this month, designated Asian-Pacific American Heritage Month, we are proud to celebrate the many ways in which the culture of our Asian citizens enriches us as Minnesotans and Americans.

In Minnesota, we celebrate with a myriad of public events throughout the State, including a Burmese cultural exhibition, dance workshops, musical performances, picnics, banquets, flea markets, and festivals. For this year's theme, the Minnesota State Council on Asian-Pacific Minnesotans has chosen ''Experience Freedom,'' a thread which runs through the stories of so many Asian Americans.

Each generation of immigrants to this country has pursued a freedom not known in their homelands. Chinese, Japanese, and Filipino settlers sought out Minnesota in the late 19th century, hoping to find broad economic opportunities. This same goal motivated Korean and other Asian immigrants who left their countries to find unparalleled opportunities.

More recently, Asians have come to Minnesota seeking refuge from war. Tibetans, Hmong, Vietnamese, and Cambodians escaped from a country ravaged by war and unrest. Here, they found freedom, peace, and new avenues for fulfillment, and achievement. I am especially proud to say that with the recent election of State Representative Cy Thao, Minnesota now has two legislators of Hmong descent.

Thanks to the infusion of Asian-Pacific influences, Minnesota virtually vibrates with new ideas, philosophies, and folkways. Individually and collectively, Asian-Pacific citizens have made significant contributions to their communities, accomplishments which the State Council on Asian-Pacific Minnesotans recognizes by conferring four Annual Leadership Awards. I am pleased to join in honoring these outstanding individuals and organizations.

Jasmine Dinh has received the Professional Leadership and Community Service Award. Her commitment to public service has led her to cofound Asian Women United of Minnesota, a nonprofit organization devoted to ending violence against Asian women; to create a battered women's shelter in Minneapolis, one of the few focused on Asian American women; to serve on the staff of United States Representative Bill Luther; and to become deeply involved in the Vietnamese Community of Minnesota Organization. Recently, she opened her own business, Jasmine's Coffee and Tea House, while still working full time as a senior program manager for the Minnesota Partnership for Action Against Tobacco.

Jodie Tanaka has been recognized with the Professional Leadership Award. The owner, CEO, and president of Tanaka Advertisting, a business established by her father, Jodie developed the company into the highly successful entity it is today. Among her clients, she counts other notable Minnesota companies, including U.S. Bank, the Minnesota Twins, Northwest Airlines, and Davanni's. Her hard work and excellence in her field have consistently been acknowledged by awards from Minnesota's community of business professionals.

Dragon Festival Planning Committee is this year's Community Service Award winner. The committee has built on the original Asian American Festival, a lively and popular annual event since 1997. The newly named Dragon Festival has grown to include not only a parade but also a dragon boat race.

Kogen Taiko, players of traditional Japanese drums, have received this year's award for community service and excellence in the arts. The oldest taiko drumming ensemble in Minnesota, Kogen Taiko, preserves Japanese drumming techniques while also incorporating multiple American rhythms. The result is original Japanese-American music. The group's performances have movingly affirmed the sometimes painful Japanese experience in America. In addition, they are extensively involved in the community, having used proceeds from a benefit concert to help pay medical bills for a deceased friend and to establish an education fund for his children.

In addition to these distinguished Leadership Award winners, I would like to pay tribute to two other remarkable people.

Adeel Lari served as president of the Council on Asian-Pacific Minnesotans from 1994 to 2002. Thanks to his leadership, the council has become a driving force in educating the larger community about matters important to Asians in Minnesota. Adeel has also spent the past 28 years at the Minnesota Department of Transportation. His dedication to his community is exemplary.

Minneapolis Police Officer Duy Ngo has served the department honorably for over 5 years and was recently assigned to the Minnesota Gang Strike Force, helping to curb gang membership and violence in our State. In addition, he is a sergeant in the Army Reserves. Officer Ngo is recovering well from injuries received when he was shot while working undercover. Like all Minnesotans, I deeply appreciate the bravery of officers like Duy Ngo who put their lives on the line every day to protect their fellow citizens.

It is entirely appropriate for us to designate a special time to pay tribute to the many contributions of Americans of Asian or Pacific ancestry. At the same time, I wish to emphasize the value of the many talents, strengths, and unique qualities they consistently bring to us. We welcome and cherish their distinctive gifts and customs.●

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.)

MESSAGE FROM THE HOUSE

At 12:04 p.m., a message from the House of Representatives. delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 100. An act to restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940.

H.R. 766. An act to provide for a National Nanotechnology Research and Development Program, and for other purposes.

H.R. 866. An act to amend the Federal Water Pollution Control Act to enhance the security of wastewater treatment works.

H.R. 1609. An act to redesignate the facility of the United States Postal Service located at 201 West Boston Street in Brookfield, Missouri, as the ''Admiral Donald Davis Post Office Building''.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 53. Concurrent resolution authorizing the use of the Capitol Grounds for the Greater Washington Soap Box Derby.

H. Con. Res. 96. Concurrent resolution authorizing the use of the Capitol Grounds for the National Peace Officers' Memorial Service.

The message further announced that pursuant to section 1238(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398), as amended by division P of the Consolidated Appropriations Resolution, 2003, the Speaker reappoints the following members on the part of the House of Representatives to the United States-China Security Review Commission: Mr. Stephen D. Bryen of Maryland for a term to expire December 31, 2005; Ms. June Teufel Dryer of Florida for a term to expire December 31, 2003; Mr. Larry Wortzel of Virginia for a term to expire December 31, 2004.

The message also announced that pursuant to section 1238(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398), the Minority Leader appoints the following individual to the

United States-China Security Review Commission: Ms. Carolyn Bartholomew of the District of Columbia, for a term that expires December 31, 2004.

ENROLLED BILL SIGNED

The following enrolled bill, previously signed by the Speaker of the House, was signed on today, May 8, 2003 by the President pro tempore (Mr. BYRD).

H.R. 289. An act to expand the boundaries of the Ottawa Wildlife Refuge Complex and the Detroit River International Wildlife Refuge.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 100. An act to restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940; to the Committee on Veterans' Affairs.

H.R. 766. An act to provide for a National Nanotechnology Research and Development Program, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 866. An act to amend the Federal Water Pollution Control Act to enhance the security of wastewater treatment works; to the Committee on Environment and Public Works.

H.R. 1609. An act to redesignate the facility of the United States Postal Service located at 201 West Boston Street in Brookfield, Missouri, as the ''Admiral Donald Davis Post Office Building''; to the Committee on Governmental Affairs.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 1009. A bill to amend the Foreign Assistance Act of 1961 and the State Department Basic Authorities Act of 1956 to increase assistance to foreign countries seriously affected by HIV/AIDS, tuberculosis, and malaria, and for other purposes.

S. 1019. A bill to amend titles 10 and 18, United States Code, to protect unborn victims of violence.

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–2223. A communication from the Under Secretary of Defense, Acquisition, Technology and Logistics, Department of Defense, transmitting, pursuant to law, the report entitled ''Distribution of Department of Defense Depot Maintenance Workloads Fiscal Years 2003 and 2007'' received on April 30, 2003; to the Committee on Armed Services.

EC–2224. A communication from the Under Secretary of Defense, Personnel and Readiness, Department of Defense, transmitting, pursuant to law, the report of a closing of the Department of Defense commissary at Fort Monroe, VA effective July 31, 2003; to the Committee on Armed Services.

EC–2225. A communication from the Under Secretary of Defense, Comptroller, Department of Defense, transmitting, pursuant to law, the report relative to a procurement contract for the Family of Medium Tactical Vehicles (FMTV); to the Committee on Armed Services.

EC–2226. A communication from the Attorney-Advisor, Department of Transportation, transmitting, pursuant to law, the report of the designation of an acting officer for the position of Secretary of the Navy, received on May 2, 2003; to the Committee on Armed Services.

EC–2227. A communication from the Secretary of Energy, transmitting, pursuant to law, the report entitled ''Department of Energy Activities Relating to the Defense Nuclear Facilities Safety Board, received on April 30, 2003; to the Committee on Armed Services.

EC–2228. A communication from the Alternate FRLO, Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''TRICARE: Eligibility and Payment Procedures for CHAMPUS Beneficiaries Age 65 and Over (0720–AA66)'' received on April 30, 2003; to the Committee on Armed Services.

EC–2229. A communication from the Assistant Secretary of Defense and Director, Office of Personal Management, transmitting, pursuant to law, the report entitled ''Joint Evaluation by the Department of Defense (DOD) and Office of Personnel Management (OPM) of the Federal Employees Health Benefits Program (FEHBP) Demonstration: Second Report to Congress'' received on April 30, 2003; to the Committee on Armed Services.

EC–2230. A communication from the Assistant Secretary of the Navy, Installations and Environment, transmitting, pursuant to law, the report relative to analyzing optical fabrication enterprises employing military and civilian personnel for the divestiture to the private sector; to the Committee on Armed Services.

EC–2231. A communication from the Program Manager, Pentagon Renovation Program, Office of the Secretary of Defense, Department of Defense, transmitting, pursuant to law, the report entitled ''The Renovation of the Pentagon'' received on April 30, 2003; to the Committee on Armed Services.

EC–2232. A communication from the General Counsel, Department of Defense, transmitting, pursuant to law, the report of legislative initiatives that are part of the National Defense Authorization Act for Fiscal Year 2004, received on April 30, 2003; to the Committee on Armed Services.

EC–2233. A communication from the Director, Regulations Policy and Management, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Change of Address; Technical Amendment'' received on April 30, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–2234. A communication from the Director, Regulations Policy and Management, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Records and Reports Concerning Experience With Approval New Animal Drugs (0910–AC42)'' received on April 30, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–2235. A communication from the Regulations Coordinator, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Head Start Program (0970–AB54)'' received on April 30, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–2236. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report entitled ''Fiscal Year 2002 Prescription Drug User Fee Act of 1992 Financial Report'' received on April 30, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–2237. A communication from the General Counsel, National Science Foundation, transmitting, pursuant to law, the report of a rule entitled ''Final Rule on Antarctic Meteorites, 45 CFR Part 674 (3145–AA40)'' received on April 30, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–2238. A communication from the President, United States Institute of Peace, transmitting, pursuant to law, the report entitled ''Consolidated Financial Statements and Additional Information for Year ended September 30, 2002 and 2001'' received on April 30, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–2239. A communication from the Attorney-Advisor, Department of Transportation, transmitting, pursuant to law, the report of a nomination confirmed for the position of Deputy Administrator, Federal Aviation Administration; to the Committee on Commerce, Science, and Transportation.

EC–2240. A communication from the Chief Financial Officer, Department of Housing and Urban Development, transmitting, pursuant to law, the report of the Department of Housing and Development's inventory of commercial activities for the year 2002; to the Committee on Governmental Affairs.

EC–2241. A communication from the Director, U.S. Trade and Development Agency (USTDA), transmitting, pursuant to law, the report of a the USTDA Annual Performance Plan for Fiscal Year (FY) 2004; to the Committee on Governmental Affairs.

EC–2242. A communication from the Chairman, National Endowment for the Humanities, transmitting, pursuant to law, the report of the Fiscal Year 2002 Performance Report of the National Endowment for the Humanities; to the Committee on Governmental Affairs.

EC–2243. A communication from the Secretary to the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on Council Resolution 15-86 ''Sense of the Council on Maintaining Open Spaces for Demonstrations in the District of Columbia Emergency Resolution of 2003'' received on April 30, 2003 ; to the Committee on Governmental Affairs.

EC–2244. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, the report relative to Federal Employees Clean Air Incentives; to the Committee on Governmental Affairs.

EC–2245. A communication from the Assistant Secretary, Legislative Affairs, transmitting, pursuant to Arms Export Control Act, the report on the export of Defense articles that are firearms controlled under category I of the United States Munitions List Sold commercially under a contract in the amount of $1,000,000 or more to Columbia; to the Committee on Foreign Relations.

EC–2246. A communication from the Assistant Secretary, Legislative Affairs, transmitting, pursuant to law, the report relative to shrimp harvesting technology that may adversely affect certain sea turtles; to the Committee on Foreign Relations .

EC–2247. A communication from the Assistant Secretary, Legislative Affairs, transmitting, pursuant to law, the report on Nuclear Nonproliferation in South Asia, received on April 30, 2003; to the Committee on Foreign Relations.

EC–2248. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report relative to international agreements other than treaties entered into by the United States under the Case-Zablocki Act with Bulgaria, Economic Community of West African States, Djibouti and

Denmark, received on April 30, 2003; to the Committee on Foreign Relations.

EC–2249. A communication from Chairman of the Subcommittee on Commerce, Justice, State and Judiciary, U.S. House of Representatives, transmitting, the report of a letter that is relative to China's Human Rights Record; to the Committee on Foreign Relations.

EC–2250. A communication from the Rules Administrator, Office of General Counsel, Federal Bureau of Prisons, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Bureau of Prisons Emergencies - Interim Final Rule (1120-AB17)'' received on April 28, 2003; to the Committee on the Judiciary.

EC–2251. A communication from the Director, Regulations & Forms Services Division, Bureau of Citizenship and Immigration Services, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Electronic Signature on Applications and Petitions for Immigration and Naturalization Benefits (1615-AA83)'' received on April 30, 2003; to the Committee on the Judiciary.

EC–2252. A communication from the Chairman, United States Sentencing Commission, transmitting, pursuant to law, the report on amendments to sentencing guidelines, policy statements and official commentary, received on May 2, 2003; to the Committee on the Judiciary.

EC–2253. A communication from the Chairman, United States Sentencing Commission, transmitting, pursuant to law, the report entitled ''Report to the Congress: Increased Penalties for Campaign Finance Offenses and Legislative Recommendations'' received on May 2, 2003; to the Committee on the Judiciary.

EC–2254. A communication from the Chairman, United States Sentencing Commission, transmitting, pursuant to law, the report entitled ''Report to Congress: Increased Penalties for Cyber Security Offenses'' received on May 2, 2003; to the Committee on the Judiciary.

EC–2255. A communication from the Assistant Secretary, Legislative Affairs, transmitting, pursuant to law, the report of a rule entitled ''Documentation of Nonimmigrant Under the Immigration and Nationality Act, as Amended—Victims of Severe Forms of Trafficking in Persons (22 CFR Parts 40 and 41)'' received on May 2, 2003; to the Committee on the Judiciary.

EC–2256. A communication from the Acting Associate Attorney General, Department of Justice, transmitting pursuant to law, the report relative to the Department of Justice's 2002 annual report on certain activities pertaining to the Freedom of Information Act; to the Committee on the Judiciary.

EC–2257. A communication from the Attorneys General, transmitting, pursuant to law, the report relative to Foreign Intelligence Surveillance Court; to the Committee on the Judiciary.

EC–2258. A communication from the Director, Federal Judicial Center, transmitting, pursuant to law, the report entitled ''Federal Judicial Center's annual report for the 2002 calendar year'' received on April 30, 2003; to the Committee on the Judiciary.

EC–2259. A communication from the Secretary, Judicial Conference of the United States, transmitting, pursuant to law, the report relative to the Judicial Conference recommendations affecting dollar amounts in the Bankruptcy code; to the Committee on the Judiciary.

EC–2260. A communication from the Secretary, Federal Trade Commission, transmitting, pursuant to law, the report of a document entitled ''College Scholarship Fraud Prevention Act of 2000 - Second Annual Report to Congress'' received on May 1, 2003; to the Committee on the Judiciary.

EC–2261. A communication from the Director, Administrative Office of the United States Courts, transmitting, pursuant to law, the report of a document entitled ''2002 Wiretap Report'' received on April 28, 2003; to the Committee on the Judiciary.

EC–2262. A communication from the Staff Director, United States Commission on Civil Rights, transmitting, pursuant to law, the report relative to the recharter of the Minnesota State Advisory Committee (SAC), received on April 16, 2003; to the Committee on the Judiciary.

EC–2263. A communication from the Secretary, Fish, Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Final Designations and Nondesignations of Critical Habitat for 60 Plant Species From the Islands of Maui and Kahoolawe, Hawaii; Final Rule (1018–AH70)'' received on May 5, 2003; to the Committee on Environment and Public Works.

EC–2264. A communication from the Assistant Secretary, Fish, Wildlife and Parks, Fish and Wildlife, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Final Designations or Nondesignations of Critical Habitat for 101 Plant Species From the Island of Oahu, Hawaii; Final Rule; to the Committee on Environment and Public Works.

EC–2265. A communication from the Assistant Secretary, Fish and Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; final Designations and Nondesignations of Critical Habitat for Five Plant Species From the Northwestern Hawaiian Islands; Final rule (1018–AH09)'' received on May 5, 2003; to the Committee on Environment and Public Works.

EC–2266. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation Implementation Plan; Illinois New Source Review Amendments (FRL 7481–3)'' received on May 7, 2003; to the Committee on Environment and Public Works.

EC–2267. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans, and Designation of Areas for Air Quality Planning Purposes, State of Illinois (FRL 7496–4)'' received on May 7, 2003; to the Committee on Environment and Public Works.

EC–2268. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Emission Test Averaging (FRL 7487–5)'' received on May 7, 2003; to the Committee on Environment and Public Works.

EC–2269. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Plan for Designation Facilities and Pollutants: Mississippi (FRL 7497–3)'' received on May 7, 2003; to the Committee on Environment and Public Works.

EC–2270. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERLA (FRL 7496–2)'' received on May 7, 2003; to the Committee on Environment and Public Works.

EC–2271. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (FRL 7495–6)'' received on May 7, 2003; to the Committee on Environment and Public Works.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–91. A resolution from the Senate of the Legislature of the State of Louisiana reletive to the Pledge of Allegiance; to the Committee on the Judiciary.

SENATE CONCURRENT RESOLUTION NO. 1

Whereas, one of the founding principles of the United States of America was the free exercise of religion and religious beliefs; and

Whereas, the First Amendment to the Constitution of the United States provides that Congress shall make no law establishing a religion, or prohibiting the free exercise of religion; and

Whereas, Article I, Section 8 of the Louisiana Constitution of 1974 similarly prohibits the enactment of law respecting an establishment of religion or prohibiting the free exercise of religion; and

Whereas, the Pledge of Allegiance was written in 1892 as a means of celebrating the quadricentennial celebration of Columbus Day in 1892 and as patriotic oath and salute to the flag; and

Whereas, the words ''under God'' were added to the Pledge of Allegiance by Congress in 1954; and

Whereas, the display of symbolic patriotism contained in the words of the Pledge of Allegiance is more critical today than ever before in out Nation's history and should be maintained; and

Whereas, while the United States does not have a provision for a national referendum, Congress may vote to place a national referendum on the ballot as a constitutional amendment to maintain the words ''one nation under God'' in the Pledge of Allegiance, thus allowing the true will of the people to be heard: Therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize the Congress of the United States to adopt and place on the ballot a national referendum to maintain the words ''one nation under God'' in the Pledge of Allegiance; and be it further

Resolved, That a copy of this Resolution be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation to the United States Congress.

POM–92. A resolution adopted by the House of Representatives of the State of Delaware relative to immigrants in the U.S. Military; to the Committee on the Judiciary.

HOUSE CONCURRENT RESOLUTION NO. 20

Whereas, immigrants have a long history of service in the United States military, including service in major wars, including, but not limited to, World War I, World War II,

the Korean War, the Vietnam War, Operation Desert Storm, and the current war in Iraq; and

Whereas, the number of immigrants serving in the United States military has grown from 28,000 in 2000 to more than 37,000 today, and to date, immigrants comprise nearly 5 percent of all enlisted personnel on active duty in the United States Armed Forces and more than 20 percent of Congressional Medal of Honor recipients; and

Whereas, several immigrants have already lost their lives in Operation Iraqi Freedom, and service in the United States military, particularly in times of conflict, is the ultimate act of patriotism and duty served to the United States; and

Whereas, many immigrants on active duty are trying to become naturalized citizens and are required by law to be available at all times for military service but are only allowed to apply for United States citizenship after completing three years of service; and

Whereas, President George W. Bush recently issued an executive order conferring immediate eligibility for citizenship to immigrants serving on active duty in the United States Armed Forces to reward immigrants serving during the post-September 11 war on terrorism: Now, therefore, be it

Resolved, by the House of Representatives of the 142nd General Assembly of the State of Delaware, the Senate concurring therein, That the Legislature of the State of Delaware urges the President and the Congress of the United States to amend federal selective service and immigration laws to grant the right of citizenship to any and all immigrants honorably discharged from the military; and be it further

Resolved, That the Clerk of the House transmit copies of this resolution to the President and Vice President of the United States, and to the members of Delaware's congressional delegation.

POM–93. A resolution adopted by the Orange County Fire Authority Board of Directors of the State of California relative to first responders; to the Committee on the Judiciary.

POM–94. A resolution adopted by the Senate of the State of Kansas relative to the Pledge of Allegiance; to the Committee on the Judiciary.

SENATE RESOLUTION NO. 1827

Whereas, this nation was founded by people seeking a place where they could practice their religion freely; and

Whereas, the first settlers found themselves in a strange and strenuous land which required them to call upon the strength of their God and to place themselves in his trust; and

Whereas, our founding fathers, in creating our national constitution, assured the freedom of choice in one's practice of religion. However, our national leaders in times of stress have called upon our belief and trust in a superior being to see this nation through difficult times, and have acknowledged the continuous presence of our God by inscribing on our currency the reassuring phrase ''In God we trust'' and by including the phrase ''one Nation under God'' in our pledge of allegiance; and

Whereas, the strength of a nation can be measured in its citizens' desire for domestic tranquility and in their abiding belief in a supreme being. Accordingly, it is urged upon the Congress of the United States that this basic requirement of a great nation be recognized by amending our constitution as follows: ''Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several states within seven years after the date of its submission for ratification:

Section 1. The first amendment to the Constitution of the United States shall not be construed to prohibit the recitation of the Pledge of Allegiance to the Flag, which shall be, '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.'

Section 2. The first amendment to the Constitution of the United States shall not be construed to prohibit the recitation or use of the national motto, which shall be, 'In God we trust' ''; and

Whereas, we urge Congress to pass this Constitutional Amendment and to send it on to the individual states for their approval: Now, therefore, be it

Resolved by the Senate of the State of Kansas, That we memorialize the Congress of the United States to seek a constitutional amendment to protect the pledge of allegiance and our national motto; and be it further

Resolved, That the Secretary of the Senate be directed to provide an enrolled copy of this resolution to the President of the Senate and the Speaker of the House of Representatives of the United States Congress and to each member of the Kansas Congressional Delegation.

POM–95. A resolution adopted by the House of Representatives of the State of Delaware relative to Free Trade; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 12

Whereas, the United States should promote the values of freedom, democracy, and a commitment to open markets and the free exchange of both goods and ideas at home and abroad; and

Whereas, the Republic of China on Taiwan shares these values with the United States and has struggled throughout the past 50 years to create what is today an open and thriving democracy; and

Whereas, the United States must continue to support the growth of democracy and ongoing market opening in Taiwan if this relationship is to evolve and reflect the changing nature of the global system in the 21st Century; and

Whereas, despite the fact that Taiwan only recently became a member of the World Trade Organization and that it has no formal trade agreement with the United States, Taiwan has nevertheless emerged as the United States' eighth largest trading partner; and

Whereas, American business and workers have benefited greatly from this dynamic trade relationship, most recently in the computer and electronics sector; and

Whereas, Taiwan is a gateway to other Pacific Rim markets for United States exports, helping to preserve peace and stability within the entire region; and

Whereas, United States agricultural procedures have been particularly under represented in the list of United States exports to the region, despite the importance of the markets for growers of corn, wheat, and soybeans; and

Whereas, a free trade agreement would not only help Taiwan's economy dramatically expand its already growing entrepreneurial class, but it would also serve an important political function; and

Whereas, the United States needs to support partner countries that are lowering trade barriers; and

Whereas, Taiwan has emerged the past two decades as one of the United States' most important allies in Asia and throughout the world; and

Whereas, in the interest of supporting, preserving and protecting the democratic fabric of the government of Taiwan, it is made clear that the United States supports the withdrawal of missiles deployed as a threat again Taiwan by the People's Republic of China; and

Whereas, it is in the interest of the United States to encourage the development of both these institutions; and

Whereas, the United States has an obligation to its allies and it its own citizens to encourage economic growth, market opening, and the destruction of trade barriers as a means of raising living standards across the board; and

Whereas, a free trade agreement with Taiwan would be a positive step toward accomplishing all of these goals: Now therefore, be it

Resolved by the House of Representatives of the 142nd General Assembly of the State of Delaware, the Senate concurring therein, That the Bush Administration be encouraged to support a free trade agreement between the United States and Taiwan; and be it further

Resolved, That the United States policy should include the pursuit of some initiative in the World Trade Organization which will give Taiwan meaningful participation in a manner that is consistent with the organization's requirements; and be it further

Resolved, That a copy of this resolution be sent to the President of the United States, the United States Secretary of State, the Secretary of Health, Education, and Welfare, the Speaker of the United States House of Representatives, the President of the United States Senate, the Government of Taiwan, the World Trade Organization, and the members of Delaware's congressional delegation.

POM–96. A joint resolution adopted by the Senate of the Commonwealth of Virginia relative to nitrogen reduction technology; to the Committee on Environment and Public Works.

SENATE JOINT RESOLUTION NO. 424

Whereas, the Chesapeake Bay and its tributaries are national treasures that play a vital role in many sectors of Virginia's economy including the commercial seafood, recreational fishing, and tourism industries; and

Whereas, while significant progress has been made in restoring the Chesapeake Bay and its tributaries, they remain in a significantly degraded condition; and

Whereas, nitrogen pollution, the most serious problem facing water quality in the Bay today, results in excessive algae growth that clouds water, depletes oxygen, and severely impacts vital bay grasses, young fish, and crabs; and

Whereas, the Commonwealth is a signatory to the Chesapeake 2000 Agreement, in which Virginia pledged to significantly reduce nitrogen pollution sufficient to remove the Chesapeake Bay from the United States Environmental Protection Agency's impaired waters list by 2010; and

Whereas, upgrading sewage treatment plants, which currently contribute 61 million pounds of nitrogen annually to the Bay, is one of the most cost-effective steps that can be taken to significantly reduce nitrogen pollution; and

Whereas, sewage treatment plants in Virginia discharge up to 25 milligrams of nitrogen per liter of wastewater, while current technology allows the nitrogen content of treated wastewater to be reduced to only three milligrams per liter; and

Whereas, United States Senators of Virginia and the United States House of Representatives from the 1st, 3rd, 4th, 6th, 8th, 10th, and 11th Virginia Congressional Districts have introduced legislation to provide cost-share grant funding to allow Bay watershed sewage treatment plants to substantially reduce their nitrogen pollution by installing NRT: Now, therefore, be it

Resolved by the Senate, the House of Delegates concurring, That the Congress of the United States be urged to adopt legislation in support of funding for nitrogen reduction technology (NRT) in the 108th Congress; and be it further

Resolved, That the Clerk of the Senate transmit copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Virginia Congressional Delegation so that they may be apprised of the sense of the General Assembly of Virginia in this matter.

POM–97. A resolution adopted by the Chemung County Legislature of the State of New York relative to the Transportation Equity Act for the 21st Century; to the Committee on Environment and Public Works.

POM–98. A resolution adopted by the House of Representatives of the State of Michigan relative to the Funding of Transportation Initiatives by the Federal Government; to the Committee on Environment and Public Works.

HOUSE CONCURRENT RESOLUTION NO. 5

Whereas, for several decades, Michigan has sent much more federal highway tax money to Washington than it has received in return. This imbalance has helped our nation build the country's highway infrastructure. With the national infrastructure largely completed, the continuation of the imbalance has created a serious challenge for Michigan and other ''donor states''; and

Whereas, Michigan, which typically loses between $150 million and $400 million each year by sending more to Washington than it receives, is severely hampered. The unfair practice of contributing hundreds of millions of dollars beyond the amount we receive to fund projects in other parts of the country makes it far more difficult for Michigan to maintain the quality of its highways. The loss of funding also represents a serious loss of economic activity; and

Whereas, the chairman of the House Transportation and Infrastructure Committee and the chairman of the Senate Environment and Public Works Committee in Congress have proposed a major change in how federal highway funds are distributed. They have called for a funding formula that would guarantee that all states receive a minimum of 95 percent of what they each contribute to the federal highway program; and

Whereas, the potential impact for Michigan of a guarantee of at least 95 percent of this funding would be very significant. Even as the economy calls for more careful public expenditures, this proposed policy change would help Michigan and bring greater fairness to the issue of transportation spending. Citizens, visitors, and businesses of this state would benefit enormously from this long overdue policy: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That we memorialize the Congress of the United States to enact legislation to provide that all states receive a minimum of 95 percent of transportation funds sent to the federal government and to urge Congress to make the return of transportation money to the states a higher priority within existing federal revenues; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–99. A resolution adopted by the House of Representatives of the State of Michigan relative to reauthorization of the Transportation Equity Act; to the Committee on Environment and Public Works.

HOUSE RESOLUTION NO. 23

Whereas, the Interstate Traveler Project is an elevated maglev (magnetic levitation) rail mass transit system that is based upon a conduit cluster concept powered by hydrogen and solar power. The project promises to provide travelers with a clean, quiet, safe, reliable mode of transportation. The intent of the project is to create the world's first switchable maglev rail network that will provide inter-urban/inter-city pedestrian, automobile, and light freight transit services. The project will simultaneously produce, store, and distribute hydrogen, which will not only serve as an alternative energy resource, but also will give Michigan's automakers the incentive to produce hydrogen internal combustion engines, fuel cell cars, and the manufacturing opportunity to build maglev rail cars; and

Whereas, by fully integrating with the interstate highway system, existing transportation infrastructure, and mass transmit systems, the Interstate Traveler Project seeks to reduce traffic congestion and air pollution while improving traffic safety and efficiency. The Interstate Traveler Project substations will utilize the existing interstate highway system's entrances and exits, providing a seamless link of private automobiles, pedestrian traffic, existing municipal bus routes, and tax services. These substations will also support the hydrogen distribution system, as well as fiber optics, water, electricity, and other utilities. Although the Interstate Traveler Project is ideally suited for the interstate highway, system, it may also be integrated with existing and abandoned railroad right-of-ways or along other appropriate lands; and

Whereas, the Interstate Traveler Project is consistent with the 2003 State-of-the-Union address which called on Congress to appropriate $1.2 billion for hydrogen fuel cell technology: Now, therefore, be it

Resolved by the House of Representatives, That we memorialize Congress to enact legislation to support research, development, and construction of the Interstate Traveler Project through the reauthorization of the Transportation Equity Act of the 21st Century (TEA-21) and/or other related federal programs; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–100. A joint resolution adopted by the Legislature of the State of Washington relative to veterans with disabilities; to the Committee on Veterans' Affairs.

SENATE JOINT MEMORIAL 8008

Whereas, many American service members have sacrificed their lives for the United States; and

Whereas, many of these service members have retired from active duty and 28 percent of the retirees were found to be disabled; and

Whereas, those retired disabled service members are required by law to have their retirement income reduced dollar for dollar to pay their disability compensation; and

Whereas, retired veterans make up approximately ten percent of all veterans living in this state and the retired disabled veterans make up approximately 36.6 percent of the retired veteran population of this state; and

Whereas, concurrent receipt of both the retired pay and the disability compensation pay would add financially to the welfare of this state as well as the veterans: Now, therefore,

Your Memorialists respectfully pray that the President, in acting upon the recommendations of the National Service Organizations, fund the enacted law for all disabled retired veterans. Your Memorialists further pray that Congress and the President affirm the debt owed these veterans and pass a budget to furnish the veterans their concurrent receipt: Be it

Resolved, That copies of this Memorial be immediately transmitted to the Honorable George W. Bush, President of the United States, the Secretary of the United States Department of Veterans Affairs, the Secretary of the United States Department of Defense, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM–101. A resolution adopted by the Department of Veteran's Affairs of the State of Alabama relative to recouping cost incurred from ''Operation Iraqi Freedom'' from the Country of Iraq; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROBERTS, from the Select Committee on Intelligence, without amendment:

S. 1025. An original bill to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes (Rept. No. 108–44).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HATCH for the Committee on the Judiciary.

John G. Roberts, Jr., of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

Carolyn B. Kuhl, of California, to be United States Circuit Judge for the Ninth Circuit.

Consuelo Maria Callahan, of California, to be United States Circuit Judge for the Ninth Circuit.

S. Maurice Hicks, Jr., of Louisiana, to be United States District Judge for the Western District of Louisiana.

William Emil Moschella, of Virginia, to be an Assistant Attorney General.

Leonardo M. Rapadas, of Guam, to be United States Attorney for the District of Guam and concurrently United States Attorney for the District of the Northern Mariana Islands for the term of four years.

Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first

and second times by unanimous consent, and referred as indicated:

By Ms. CANTWELL (for herself, Mr. CRAPO, Mrs. MURRAY, Ms. MURKOWSKI, Mr. LEAHY, Mrs. CLINTON, and Mr. SCHUMER):

S. 1024. A bill to authorize the Attorney General to carry out a program, known as the Northern Border Prosecution Initiative, to provide funds to northern border States to reimburse county and municipal governments for costs associated with certain criminal activities, and for other purposes; to the Committee on the Judiciary.

By Mr. ROBERTS:

S. 1025. An original bill to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; from the Select Committee on Intelligence; to the Committee on Armed Services pursuant to section 3(b) of S. Res. 400, 94th Congress, for a period of not to exceed 30 days of session.

By Mr. SHELBY:

S. 1026. A bill to amend the Internal Revenue Code of 1986 to phase out the taxation of social security benefits; to the Committee on Finance.

By Mr. NELSON of Nebraska:

S. 1027. A bill to amend the Irrigation Project Contract Extension Act of 1998 to extend certain contracts between the Bureau of Reclamation and certain irrigation water contractors in the States of Wyoming and Nebraska; to the Committee on Energy and Natural Resources.

By Mr. CRAPO:

S. 1028. A bill to amend the Public Health Service Act to establish an Office of Men's Health; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ENSIGN:

S. 1029. A bill to enhance peace between the Israelis and Palestinians; to the Committee on Foreign Relations.

By Mr. BINGAMAN:

S. 1030. A bill to expand the number of individuals and families with health insurance coverage, and for other purposes; to the Committee on Finance.

By Mr. BAYH:

S. 1031. A bill to amend the Internal Revenue Code of 1986 to allow a tax credit for long-term care givers; to the Committee on Finance.

By Mr. SARBANES (for himself, Mr. ALEXANDER, Mr. AKAKA, Mr. BAUCUS, Mr. CORZINE, Mr. DODD, Mr. GRAHAM of Florida, Mr. KENNEDY, Mr. LAUTENBERG, Mr. LEVIN, Mr. REID, Mr. SCHUMER, Ms. STABENOW, and Mr. WYDEN):

S. 1032. A bill to provide for alternative transportation in certain federally owned or managed areas that are open to the general public; to the Committee on Energy and Natural Resources.

By Mr. BINGAMAN (for himself, Mr. LUGAR, Mrs. LINCOLN, Mr. CORZINE, Ms. LANDRIEU, Mr. BREAUX, Mr. KERRY, Ms. CANTWELL, Mrs. MURRAY, Mrs. CLINTON, and Mr. MILLER):

S. 1033. A bill to amend titles XIX and XXI of the Social Security Act to expand or add coverage of pregnant women under the medicaid and State children's health insurance program, and for other purposes; to the Committee on Finance.

By Mrs. FEINSTEIN (for herself, Mr. SCHUMER, Mr. CHAFEE, Mr. JEFFORDS, Mr. KENNEDY, Mr. DURBIN, Mr. LAUTENBERG, Mrs. BOXER, and Mr. REED):

S. 1034. A bill to repeal the sunset date on the assault weapons ban, to ban the importation of large capacity ammunition feeding devices, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 134. A resolution to authorize representation by the Senate Legal Counsel in Newdow v. Eagen, et al.; considered and agreed to.

By Mr. FRIST (for himself, Mr. SANTORUM, Mr. BROWNBACK, and Mr. TALENT):

S. Res. 135. A resolution expressing the sense of the Senate that Congress should provide adequate funding to protect the integrity of the Frederick Douglass National Historic Site; to the Committee on Energy and Natural Resources.

By Mr. DASCHLE (for Mr. KENNEDY (for himself and Mr. VOINOVICH)):

S. Res. 136. A resolution recognizing the 140th anniversary of the founding of the Brotherhood of Locomotive Engineers, and congratulating members and officers of the Brotherhood of Locomotive Engineers for the union's many achievements; to the Committee on the Judiciary.

By Mr. FRIST (for himself, Mr. DASCHLE, Mr. STEVENS, Mr. KENNEDY, Mr. JEFFORDS, Mr. INHOFE, Mrs. HUTCHISON, and Mrs. FEINSTEIN):

S. Res. 137. A resolution honoring James A. Johnson, Chairman of the Board of Trustees of the John F. Kennedy Center for the Performing Arts; considered and agreed to.

ADDITIONAL COSPONSORS

S. 73

At the request of Mr. INOUYE, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 73, a bill to amend the Public Health Service Act to provide for the establishment of a National Center for Social Work Research.

S. 139

At the request of Mr. LIEBERMAN, the names of the Senator from Illinois (Mr. DURBIN), the Senator from Hawaii (Mr. AKAKA) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 139, a bill to provide for a program of scientific research on abrupt climate change, to accelerate the reduction of greenhouse gas emissions in the United States by establishing a market-driven system of greenhouse gas tradeable allowances that could be used interchangably with passenger vehicle fuel economy standard credits, to limit greenhouse gas emissions in the United States and reduce dependence upon foreign oil, and ensure benefits to consumers from the trading in such allowances.

S. 146

At the request of Mr. DEWINE, the names of the Senator from Virginia (Mr. ALLEN) and the Senator from Arizona (Mr. MCCAIN) were added as cosponsors of S. 146, a bill to amend titles 10 and 18, United States Code, to protect unborn victims of violence.

S. 319

At the request of Ms. MIKULSKI, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 319, a bill to amend chapter 89 of title 5, United States Code, to increase the Government contribution for Federal employee health insurance.

S. 465

At the request of Mrs. MURRAY, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 465, a bill to amend title XVIII of the Social Security Act to expand Medicare coverage of certain self-injected biologicals.

S. 470

At the request of Mr. SARBANES, the names of the Senator from South Dakota (Mr. DASCHLE), the Senator from North Carolina (Mr. EDWARDS) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of S. 470, a bill to extend the authority for the construction of a memorial to Martin Luther King, Jr.

S. 512

At the request of Mr. VOINOVICH, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 512, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts paid on behalf of Federal employees under Federal student loan repayment programs.

S. 540

At the request of Mr. INHOFE, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 540, a bill to authorize the presentation of gold medals on behalf of Congress to Native Americans who served as Code Talkers during foreign conflicts in which the United States was involved during the 20th Century in recognition of the service of those Native Americans to the United States.

S. 557

At the request of Ms. COLLINS, the names of the Senator from Washington (Ms. CANTWELL) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. 557, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 569

At the request of Mr. ENSIGN, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 569, a bill to amend title XVIII of the Social Security Act to repeal the Medicare outpatient rehabilitation therapy caps.

S. 647

At the request of Mr. KENNEDY, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 647, a bill to amend title 10, United States Code, to provide for

Department of Defense funding of continuation of health benefits plan coverage for certain Reserves called or ordered to active duty and their dependents, and for other purposes.

S. 877

At the request of Mr. BURNS, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 877, a bill to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

S. 888

At the request of Mr. GREGG, the names of the Senator from Connecticut (Mr. LIEBERMAN), the Senator from California (Mrs. BOXER) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. 888, a bill to reauthorize the Museum and Library Services Act, and for other purposes.

S. 893

At the request of Mr. SANTORUM, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 893, a bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes.

S. 923

At the request of Mr. KENNEDY, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 923, a bill to provide for additional weeks of temporary extended unemployment compensation, to provide for a program of temporary enhanced regular unemployment compensation, and for other purposes.

S. 949

At the request of Mr. JOHNSON, his name was added as a cosponsor of S. 949, a bill to establish a commission to assess the military facility structure of the United States overseas, and for other purposes.

S. 1000

At the request of Mr. GRAHAM of South Carolina, the names of the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. 1000, a bill to amend title 10, United States Code, to revise the age and service requirements for eligibility to receive retired pay for non-regular service; to provide TRICARE eligibility for members of the Selected Reserve of the Ready Reserve and their families; to amend the Internal Revenue Code of 1986 to allow employers a credit against income tax with respect to employees who participate in the military reserve components and to allow a comparable credit for participating reserve component self-employed individuals, and for other purposes.

S. 1001

At the request of Mr. BIDEN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1001, a bill to make the protection of women and children who are affected by a complex humanitarian emergency a priority of the United States Government, and for other purposes.

S. 1009

At the request of Mr. BIDEN, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1009, a bill to amend the Foreign Assistance Act of 1961 and the State Department Basic Authorities Act of 1956 to increase assistance to foreign countries seriously affected by HIV/AIDS, tuberculosis, and malaria, and for other purposes.

S. 1019

At the request of Mr. DEWINE, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 1019, a bill to amend titles 10 and 18, United States Code, to protect unborn victims of violence.

S. 1023

At the request of Mr. HATCH, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 1023, a bill to increase the annual salaries of justices and judges of the United States.

S. 1023

At the request of Mrs. FEINSTEIN, her name was added as a cosponsor of S. 1023, supra.

S. CON. RES. 21

At the request of Mr. BUNNING, the name of the Senator from Kentucky (Mr. MCCONNELL) was added as a cosponsor of S. Con. Res. 21, a concurrent resolution expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other developmental disabilities is at serious risk because of the crisis in recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. CANTWELL (for herself, Mr. CRAPO, Mrs. MURRY, Ms. MURKOWSKI, Mr. LEAHY, Mrs. CLINTON, and Mr. SCHUMER):

S. 1024. A bill to authorize the Attorney General to carry out a program, known as the Northern Border Prosecution Initiative, to provide funds to northern States to reimburse county and municipal governments for costs associated with certain criminal activities, and for other purposes; to the Committee on the Judiciary.

Ms. CANTWELL. Mr. President, today my colleagues and I introduce the Northern Border Prosecution Reimbursement Initiative. This bill outlines an important initiative that would give our northern border States and counties financial assistance in prosecuting criminal and immigration-related cases that arise because of proximity to the border. I thank my fellow northern border Senators and cosponsors, Senators CRAPO, MURRY, MURKOWSKI, LEAHY, CLINTON and SCHUMER for joining with me to introduce and work to pass this important legislation.

This initiative is modeled on a successful program already in place for southern border States. The Southern Border Prosecution Initiative allows States and counties to apply for reimbursement of costs incurred in any federally initiated or declined-referred criminal case. The program is targeted at immigration-related cases, but is not limited only to cases involving immigration charges. Cases arising out of immigration issues but ranging from a misdemeanor property charge to a felony drug conviction are eligible for reimbursement under the southern border program. The program proposed in the legislation introduced today would be operated in the same way.

Federal agencies—such as the Border Patrol and INS—have ongoing efforts to police the Nation's borders, resulting in hundreds of arrests each year. For many reasons, some of those cases are not pursued by Federal law enforcement authorities and instead are handed off to State or county officials for further prosecution. Instead of asking States to absorb those costs—likely at the expense of other important local law enforcement initiatives—the Northern Border Prosecution Reimbursement Initiative allows States and counties to receive compensation for pursuing these immigration-related cases.

The Northern Border Prosecution Reimbursement Initiative would be administered by the Department of Justice's Bureau of Justice Assistance. States and counties would be able to apply for reimbursement during an annual application period, with no limit on the number of cases submitted. Under the act, funds distribution is not based on the size or population of a northern border State, but upon the number of eligible cases submitted by each jurisdiction. It is possible for reimbursement to equal 100 percent of costs, though money is distributed on a pro rata basis if applications exceed available revenues. Each of the 14 States along the northern border would be eligible for the reimbursement program: Alaska, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Ohio, Pennsylvania, Vermont, Washington and Wisconsin.

Last year, $40 million was provided to southern border States Arizona, California, New Mexico and Texas, offsetting the costs of prosecuting immigration-related cases. For 2002, $50 million was allocated to the program. My legislation simply authorizes $28 million for Fiscal Year 2004 be made available to northern border states for the same purpose.

In the years leading up to Sept. 11, 2001, activity along the northern border had shifted primarily from a focus on immigration issues to those related to

trade and commerce. However, homeland security has grown into a paramount concern in the wake of the 2001 terror attacks, and our States and local governments are increasingly bearing an unfair financial burden in protecting and patrolling our national borders. There are hundreds of crossings along the 4,000 mile long northern border between the United States and Canada, and though improvements have been made to tighten security, the northern border has yet to receive the resources it needs to adequately enforce our Nation's immigration laws and border restrictions.

The need for greater enforcement efforts along the northern border became glaringly evident in 1998 when Ahmed Ressam, a terrorist trained at one of Osama bin Laden's training camps in Afghanistan, was arrested shortly after crossing the Canadian border into Washington State. Explosives and other bomb-making materials were found in the trunk of Ressam's car. This frightening incident made clear the vulnerabilities we face along the porous northern border, vulnerabilities that became even more concerning after the Sept. 11, 2001, terror attacks.

In the last two years, the Senate has taken steps to improve northern border security. I have worked with Senators from the 14 States that comprise the northern border—including my colleagues who join me as cosponsors on this legislation today—and we have successfully devoted more resources to northern border security efforts. The 2001 Department of Defense Appropriation's bill included $55.8 million for 500 additional Immigration and Naturalization Service inspectors along the northern border—a 105 percent increase in staffing levels. That legislation also provided $23.9 million to transfer 100 border patrol agents and hire 100 new agents. Working to protect our northern border has been a bipartisan effort, enjoying cooperation from senators across the aisle and across the country. Now it is time to take another step toward greater border and national security and approve the Northern Border Prosecution Reimbursement Initiative.

The costs of homeland security are increasingly being borne by States and local governments, an issue that this legislation tackles head-on. Without giving States and counties the necessary resources to pay for cases initiated by Federal authorities, other important local law enforcement initiatives will undoubtedly be shortchanged. States and the Federal Government must work together if our borders are to be truly safe. The Northern Border Prosecution Reimbursement Initiative is a mechanism by which all of the resources of the criminal justice system—local, State, and Federal—can work in harmony.

Mr. SHELBY. Mr. President, I rise today to introduce the Older Americans Tax Fairness Act of 2003. My bill would completely eliminate the unjust taxation of Social Security benefits once and for all. The underlying premise of my legislation is simple: Social Security benefits were never intended to be taxed. At its inception and continuing on for the next fifty years, Social Security benefits were exempt from taxation. Budgetary shortfalls in 1984 and 1993, however, led to the taxation of these benefits.

Because of the rising cost of living, many of our seniors are forced to work past age 65. To these Americans, every penny counts in determining whether they are able to pay for food, heating, and healthcare. However, by taxing Social Security benefits, we make it increasingly impossible for millions of older Americans to make ends meet. In effect, then, taxation of Social Security benefits forces many Americans to endure stressful situations in what should be the golden years of their lives.

Taxation of Social Security benefits is also wrong because it changes the rules in the middle of the game. When seniors contributed to Social Security through the payment of payroll taxes, they did so with the understanding that they would one day receive those benefits tax-free. Unfortunately, because of runaway spending, many in the government have viewed Social Security taxation as a way to make up the shortfall between Federal spending and revenue. Such a decision was wrong then and it is even more wrong now as seniors face rising living costs.

In addition to being fundamentally unfair, I believe that taxing Social Security benefits once seniors pass certain income thresholds discourages them from working. I firmly believe that senior citizens add a wealth of knowledge and experience to the workplace. As such, we must make sure that our American workforce is not deprived of these valuable assets. Our laws should encourage older Americans with a desire to work to continue contributing to our society. Unfortunately, our laws do just the opposite.

Every year my office receives hundreds of letters and calls from older Americans throughout the country and Alabama describing the hardship that Social Security taxation has placed on their lives. The solution to this situation is simple—repeal the unfair taxation of these benefits. I therefore urge my colleagues to listen to their constituents and join me in support of my bill.

By Mr. ENSIGN:

S. 1029. A bill to enhance peace between the Israelis and Palestinians; to the Committee on Foreign Relations.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1029

Be it enacted by the Senate and the House of Representatives of the United States in Congress assembled,

SEC. 1. SHORT TITLE.

This title may be cited as the ''Israeli-Palestinian Peace Enhancement Act of 2003''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The security of the State of Israel is a major and enduring national security interest of the United States.

(2) A lasting peace in the Middle East region can only take root in an atmosphere free of violence and terrorism.

(3) The Palestinian people have been ill-served by leaders who, by resorting to violence and terrorism to pursue their political objectives, have brought economic and personal hardship to their people and brought a halt to efforts seeking a negotiated settlement of the conflict.

(4) The United States has an interest in a Middle East in which two states, Israel and Palestine, will live side by side in peace and security.

(5) In his speech of June 24, 2002, and in other statements, President George W. Bush outlined a comprehensive vision of the possibilities of peace in the Middle East region following a change in Palestinian leadership.

(6) The Palestinian state must be a reformed, peaceful, and democratic state that abandons forever the use of terror.

(7) On April 29, 2003, the Palestinian Legislative Council confirmed in office, by a vote of 51 yeas, 18 nays, and 3 abstentions, the Palestinian Authority's first prime minister, Mahmoud Abbas (Abu Mazen), and his cabinet.

(8) In his remarks prior to the vote of the Palestinian Legislative Council, Mr. Abbas declared: ''The government will concentrate on the question of security . . . The unauthorized possession of weapons, with its direct threat to the security of the population, is a major concern that will be relentlessly addressed . . . There will be no other decision-making authority except for the Palestinian Authority.''.

(9) In those remarks, Mr. Abbas further stated: ''We denounce terrorism by any party and in all its forms both because of our religious and moral traditions and because we are convinced that such methods do not lend support to a just cause like ours but rather destroy it.''.

(10) Israel has repeatedly indicated its willingness to make painful concessions to achieve peace once there is a partner for peace on the Palestinian side.

SEC. 3. PURPOSES.

The purposes of this title are—

(1) to express the sense of Congress with respect to United States recognition of a Palestinian state; and

(2) to demonstrate United States willingness to provide substantial economic and humanitarian assistance, and to support large-scale multilateral assistance, after the Palestinians have achieved the reforms outlined by President Bush and have achieved peace with the State of Israel.

SEC. 4. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) peace between Israel and the Palestinians cannot be negotiated until the Palestinian system of government has been transformed along the lines outlined in President Bush's June 24, 2002, speech;

(2) substantial United States and international economic assistance will be needed after the Palestinians have achieved the reforms described in section 620K(c)(2) of the Foreign Assistance Act of 1961 (as added by section 1506 of this Act) and have made a lasting and secure peace with Israel;

(3) the Palestinian people merit commendation on the confirmation of the Palestinian Authority's first prime minister, Mahmoud Abbas (Abu Mazen), and his cabinet;

(4) the new Palestinian administration urgently should take the necessary security-related steps to allow for implementation of a performance-based road map to resolve the Israeli-Palestinian conflict;

(5) the United States Administration should work vigorously toward the goal of two states living side-by-side in peace within secure and internationally-recognized boundaries free from threats or acts of force; and

(6) the United States has a vital national security interest in a permanent, comprehensive, and just resolution of the Arab-Israeli conflict, and particularly the Palestinian-Israeli conflict, based on the terms of United Nations Security Council Resolutions 242 and 338.

SEC. 5. RECOGNITION OF A PALESTINIAN STATE.

It is the sense of Congress that a Palestinian state should not be recognized by the United States until the President determines that—

(1) a new leadership of a Palestinian governing entity, not compromised by terrorism, has been elected and taken office; and

(2) the newly-elected Palestinian governing entity—

(A) has demonstrated a firm and tangible commitment to peaceful coexistence with the State of Israel and to ending anti-Israel incitement, including the cessation of all officially sanctioned or funded anti-Israel incitement;

(B) has taken appropriate measures to counter terrorism and terrorist financing in the West Bank and Gaza, including the dismantling of terrorist infrastructures and the confiscation of unlawful weaponry;

(C) has established a new Palestinian security entity that is fully cooperating with the appropriate Israeli security organizations;

(D) has achieved exclusive authority and responsibility for governing the national affairs of a Palestinian state, has taken effective steps to ensure democracy, the rule of law, and an independent judiciary, and has adopted other reforms ensuring transparent and accountable governance; and

(E) has taken effective steps to ensure that its education system promotes the acceptance of Israel's existence and of peace with Israel and actively discourages anti-Israel incitement.

SEC. 6. LIMITATION ON ASSISTANCE TO A PALESTINIAN STATE.

Chapter 1 of part III of the Foreign Assistance Act of 1961 (22 U.S.C. 2351 et seq.) is amended—

(1) by redesignating the second section 620G (as added by section 149 of Public Law 104–164 (110 Stat. 1436)) as section 620J; and

(2) by adding at the end the following new section:

"SEC. 620K. LIMITATION ON ASSISTANCE TO A PALESTINIAN STATE.

''(a) LIMITATION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, assistance may be provided under this Act or any other provision of law to the government of a Palestinian state only during a period for which a certification described in subsection (c) is in effect. The limitation contained in the preceding sentence shall not apply (A) to humanitarian or development assistance that is provided through nongovernmental organizations for the benefit of the Palestinian people in the West Bank and Gaza, or (B) to assistance that is intended to reform the Palestinian Authority and affiliated institutions, or a newly elected Palestinian governing entity, in order to help meet the requirements contained in subparagraphs (A) through (H) of subsection (c)(2) or to address the matters described in subparagraphs (A) through (E) of section 1505(2) of the Israeli-Palestinian Peace Enhancement Act of 2003.

''(2) WAIVER.—The President may waive the limitation of the first sentence of paragraph (1) if the President determines and certifies to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that it is vital to the national interest of the United States to do so.

''(b) CONGRESSIONAL NOTIFICATION.—

''(1) IN GENERAL.—Assistance made available under this Act or any other provision of law to a Palestinian state may not be provided until 15 days after the date on which the President has provided notice thereof to the Committee on International Relations and the Committee on Appropriations of the House of Representatives and to the Committee on Foreign Relations and the Committee on Appropriations of the Senate in accordance with the procedures applicable to reprogramming notifications under section 634A(a) of this Act.

''(2) SUNSET.—Paragraph (1) shall cease to be effective beginning ten years after the date on which notice is first provided under such paragraph.

''(c) CERTIFICATION.—A certification described in this subsection is a certification transmitted by the President to Congress that—

''(1) a binding international peace agreement exists between Israel and the Palestinians that—

''(A) was freely signed by both parties;

''(B) guarantees both parties' commitment to a border between two states that constitutes a secure and internationally recognized boundary for both states, with no remaining territorial claims;

''(C) provides a permanent resolution for both Palestinian refugees and Jewish refugees from Arab countries; and

''(D) includes a renunciation of all remaining Palestinian claims against Israel through provisions that commit both sides to the ''end of the conflict''; and

''(2) the new Palestinian government—

''(A) has been democratically elected through free and fair elections, has exclusive authority and responsibility for governing the national affairs of the Palestinian state, and has achieved the reforms outlined by President Bush in his June 24, 2002, speech;

''(B) has completely renounced the use of violence against the State of Israel and its citizens, is vigorously attempting to prevent any acts of terrorism against Israel and its citizens, and punishes the perpetrators of such acts in a manner commensurate with their actions;

''(C) has dismantled, and terminated the funding of, any group within its territory that conducts terrorism against Israel;

''(D) is engaging in ongoing and extensive security cooperation with the State of Israel;

''(E) refrains from any officially sanctioned or funded statement or act designed to incite Palestinians or others against the State of Israel and its citizens;

''(F) has an elected leadership not compromised by terror;

''(G) is demilitarized; and

''(H) has no alliances or agreements that pose a threat to the security of the State of Israel.

''(d) RECERTIFICATIONS.—Not later than 90 days after the date on which the President transmits to Congress an initial certification under subsection (c), and every 6 months thereafter for the 10-year period beginning on the date of transmittal of such certification—

''(1) the President shall transmit to Congress a recertification that the requirements contained in subsection (c) are continuing to be met; or

''(2) if the President is unable to make such a recertification, the President shall transmit to Congress a report that contains the reasons therefor.

''(e) RULE OF CONSTRUCTION.—A certification under subsection (c) shall be deemed to be in effect beginning on the day after the last day of the 10-year period described in subsection (d) unless the President subsequently determines that the requirements contained in subsection (c) are no longer being met and the President transmits to Congress a report that contains the reasons therefor.''.

SEC. 7. AUTHORIZATION OF ASSISTANCE TO A PALESTINIAN STATE.

Chapter 1 of part III of the Foreign Assistance Act of 1961 (22 U.S.C. 2351 et seq.), as amended by section 1506, is further amended by adding at the end the following new section:

"SEC. 620L. AUTHORIZATION OF ASSISTANCE TO A PALESTINIAN STATE.

''(a) ASSISTANCE.—The President is authorized to provide assistance to a Palestinian state in accordance with the requirements of this section.

''(b) ACTIVITIES TO BE SUPPORTED.—Assistance provided under subsection (a) shall be used to support activities within a Palestinian state to substantially improve the economy and living conditions of the Palestinians by, among other things, providing for economic development in the West Bank and Gaza, continuing to promote democracy and the rule of law, developing water resources, assisting in security cooperation between Israelis and Palestinians, and helping with the compensation and rehabilitation of Palestinian refugees.

''(c) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts made available to carry out chapter 4 of part II of this Act for a fiscal year, there are authorized to be appropriated to the President to carry out subsections (a) and (b) such sums as may be necessary for each such fiscal year.

''(d) COORDINATION OF INTERNATIONAL ASSISTANCE.—

''(1) IN GENERAL.—Beginning on the date on which the President transmits to Congress an initial certification under section 620K(c), the Secretary of State shall seek to convene one or more donors conferences to gain commitments from other countries, multilateral institutions, and nongovernmental organizations to provide economic assistance to Palestinians to ensure that such commitments to provide assistance are honored in a timely manner, to ensure that there is coordination of assistance among the United States and such other countries, multilateral institutions, and nongovernmental organizations, to ensure that the assistance provided to Palestinians is used for the purposes for which is was provided, and to ensure that other countries, multilateral institutions, and nongovernmental organizations do not provide assistance to Palestinians through entities that are designated as terrorist organizations under United States law.

''(2) REPORT.—Not later than 180 days after the date of the enactment of this section, and on an annual basis thereafter, the Secretary of State shall prepare and submit to the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate a report that describes the activities undertaken to meet the requirements of paragraph (1), including a description of amounts committed, and the amounts provided, to a Palestinian state or Palestinians during the reporting period by each country and organization.''.

By Mr. BINGAMAN:

S. 1030. A bill to expand the number of individuals and families with health

insurance coverage, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, yesterday, I introduced the first part of a series of proposals to protect and strengthen our nation's health care safety net. That bill, the ''Strengthening Our States'' or SOS Act of 2003,'' seeks to protect and improve the Medicaid program—a critical component of our country's health system. To repeat the words of Diane Rowland and Jim Tallon of the Kaiser Commission on Medicaid and the Uninsured, ''Medicaid is the glue that helps hold our health system together and takes on the highest-risk, sickest, and most expensive populations from private insurance and Medicare.

Like a waterfront community that seeks to set up barricades against a rising river, defending the Medicaid program from attacks, such as the idea of a block grant, is a top priority.

However, once that is assured, we must also take the next step and confront the fact that an estimated 41.2 million people, or almost 15 percent of the population, was without health insurance during the entire year of 2001, which was an increase of 1.4 million people over 2000.

Moreover, the numbers in 2002 and this year have undoubtedly worsened. A report by the National Coalition on Health Care says, ''The confluence of powerful economic forces, fueled by the terrorist attacks on September 11, have unleashed a 'perfect storm' that could increase dramatically the number of uninsured in the U.S.—with as many as 6 million people in total losing their coverage in 2001 and 2002.''

The number in New Mexico are staggering. New Mexico leads or ranks second only to Texas in the percentage of its citizens who are uninsured. In fact, New Mexico is the only state in the country with less than half of its population having private health insurance coverage.

A rather shocking statistic, which also continues to worsen, is that one out of every three Hispanic citizens are uninsured. In fact, less than 43 percent of the Hispanic population now has employer-based coverage nationwide, which is in sharp comparison to the 68 percent of non-Hispanic whites who have employer-based coverage.

To address this growing crisis, I have worked closely with the American College of Physicians since last fall on the legislative proposal, which I call the ''Health Coverage, Affordability, Responsibility, and Equity Act'' or the ''HealthCARE Act of 2003.'' The proposal seeks to: First, build upon programs that currently work, including Medicaid, employer coverage, and the private market; second, provide choices for uninsured individuals, states, and small businesses while rejecting either employer or individual mandates; third, use methods that have bipartisan support by borrowing the best ideas from Democratic and Republican proposals; and, fourth, simplify rather than complicate coverage.

This is in sharp contrast, in a number of ways, to past efforts to create untried schemes or to impose mandates upon either businesses or the individual. It also seeks to bridge the divide between Democrats and Republicans. This has certainly not been easy to put together and nor will it be easy to pass. On the other hand, we have tried to start with the tools and principles more likely to get beyond the partisan divide.

As Julie Rovner of the National Journal recently wrote, ''If reforming the nation's healthcare system was easy, the old saw goes, it would have been done long ago. But for the moment, those who care about the issue seem to be succeeding only in butting each other's heads. Republicans keep pushing market-oriented reforms while Democrats want to expand existing public programs. And each party continues to reject the other's ideas. . . .''

The ''Health CARE Act'' seeks to break that partisan gridlock. First, it adopts and builds upon the notion of many Republicans to offer tax credits for the uninsured. As such, the bill would enact a new health insurance tax credit that is both refundable and advanceable to uninsured Americans with incomes up to 200 percent of the poverty level to purchase health coverage through a variety of options, including employer-coverage, State purchasing pools, or even the individual market—something pushed by a number of Republicans for many years but rejected by many Democrats.

Second, the legislation expands coverage through a State option with Federal financial support through the Medicaid program to anyone up to 100 percent of the poverty level. Medicaid has been a tried and tested program for low-income Americans over the years and is a far better and more viable option to people with incomes below the poverty level than a tax credit would be. Furthermore, few beneath the poverty level have the option of employer-coverage. Therefore, public programs, such as Medicaid, for low-income Americans makes far more sense than a tax credit.

Furthermore, through the strengthened and improved state purchasing pools provided for in the legislation, individuals and small businesses would be afforded better options to get coverage with a choice of plans that is typically not available to them with, what we believe will be, lower costs due to the ability to purchase coverage as a group.

Consequently, this approach attempts to build upon the ideas of both political parties, as it has both public program and tax credit aspects to it. Our hope is that people will see the things both parties like in it rather than focusing on what they do not like. In fact, we have also added the creation of an on-going expert health commission to make recommendations for further reforms and mid-course corrections in the future.

This bill is introduced in the spirit of compromise. To those on the right, I recognize your concern about the expansion of Medicaid as not being as market-oriented as you might prefer, but would point out that tax credits are virtually unworkable and employer-sponsored coverage often unavailable for people below the poverty level and that Medicaid is largely contracted out to private health plans—the same that many of you are enrolled in.

To those on the left, I recognize your concerns about tax credits and the potential for adverse selection with people buying coverage through the individual market, but I say to you that these are tax credits for low-income people and that we have taken steps in the legislation to mitigate problems that the added options in the bill create with respect to adverse selection. I would add that any expansion of coverage to people without health insurance is a good thing.

The most important message that I hope this bill carries is that we must stop having the perfect be the enemy of the good. This proposal is certainly not perfect but we hope it makes a very good start.

I would like to thank the American College of Physicians, or ACP, for their outstanding leadership and help in putting this legislation together. ACP has been a long-standing advocate for expanding health coverage and has authored landmark reports on the important role that health insurance has in reducing people's morbidity and mortality. In fact, to cite the conclusion of one of those studies, ''Lack of insurance contributes to the endangerment of the health of each uninsured American as well as the collective health of the nation.''

I would also like to thank the many people at the Economic and Social Research Institute, or ERSI, on their forethought, advice, and counsel as we refined the proposal over the past number of months. Their non-partisan approach and expertise have been invaluable to making the bill a workable and well-reasoned reality.

It should also be noted that the ideas put forth in the bill are based upon much of the expert work commissioned by ESRI, funded by the Robert Wood Johnson Foundation, and the Task Force on the Future of Health Insurance, funded by the Commonwealth Fund. As a result, the work of a number of other experts is reflected in the legislation and we thank you as well.

Among the endorsing organizations for this legislation are all of the leading primary care physician groups in our country. In addition to the American College of Physicians, the bill has been endorsed by the American Academy of Family Physicians, the American Academy of Pediatrics, and the American Geriatrics Society.

As a practicing physician in New Mexico, Dr. Robert Strickland sums it up well. As he wrote in an editorial

published in the Albuquerque Journal about this legislation yesterday, ''As a New Mexico internist for 31 years, I have seen many uninsured people go without care until it is too late for me to do much to help them. The HealthCARE Act offers the potential of breaking the political gridlock that has allowed this crisis in health care to go on for far too long.''

I hope we can break the gridlock and urge my colleagues to heed the call of our nation's primary care doctors to support this legislation.

I would ask unanimous consent that letters of endorsement from the American College of Physicians, the American Academy of Family Physicians, the American Academy of Pediatrics, the American Geriatrics Society, and Families USA, and the text of the legislation printed in the RECORD.

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

AMERICAN COLLEGE OF PHYSICIANS,
Washington, DC, May 8, 2003.

Hon. JEFF BINGAMAN,
U.S. Senate, 703 Senate Hart Office Building, Washington, DC.

DEAR SENATOR BINGAMAN: on behalf of the American College of Physicians (ACP), I am pleased to express our strong support for the Health Coverage, Affordability, Responsibility and Equity Act of 2003 (HealthCARE Act of 2003). ACP is the largest medical specialty society in the United States, representing 115,000 doctors of internal medicine and medical students.

We very much appreciate the opportunity you have given us to translate many of the ideas in ACP's proposal to provide health insurance coverage to all Americans by the end of the decade into the HealthCARE Act of 2003. Specifically:

States will be given new options to extend health insurance coverage to low-income working Americans, without imposing unfunded mandates on financially strapped state treasuries.

Advance, refundable tax credits will be made available to uninsured working Americans with incomes up to 200 percent of the federal poverty level.

The tax credit will provide a premium subsidy equal to what the Federal Government now provides to its own employees.

Tax credit recipients will have the options of buying coverage through state purchase group arrangements modeled after the Federal Employees Health Benefits Program, giving them the same types and variety of health plan options now available only to federal employees, or from qualified non-group insurers.

Small employers will have new options for obtaining coverage, including having access to the variety and types of health plans offered to federal employees.

An expert advisory commission will recommend essential benefits that participating health plans will be encouraged to offer, as well as ways to expand coverage to those with incomes above 200 percent of the federal poverty level.

ACP is confident that this framework can succeed where other health reform proposals have failed. By offering incentives and choices to states, employers, and consumers, instead of ''one-size-fits-all'' government mandates, the HealthCARE Act has the potential of unifying, instead of dividing, key stakeholders.

The American College of Physicians commends you for your leadership in introducing the HealthCARE Act of 2003, and we look forward to working with you and lawmakers from both political parties in getting the bill enacted into law.

Sincerely,
MUNSEY S. WHEBY, MD, FACP,
President.

MAY 5, 2003.

The Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR BINGAMAN: On behalf of the 94,300 members of the American Academy of Family Physicians, I commend you for your outstanding leadership in the effort to assure access to health care for the uninsured in this nation. The AAFP has reviewed your draft legislation that would change Medicaid, SCHIP and the federal income tax code to make health coverage more affordable to uninsured Americans. I am pleased to inform you that the AAFP supports your bill and offers you our assistance in seeking its passage.

Your legislative proposal is a wide-ranging measure that would take us noticeably closer to affordable health care coverage for all. For example, your bill would:

assist states in creating purchasing pools to provide low-cost insurance for uninsured individuals with incomes up to 200 percent of the federal poverty level;

allow small businesses to have access to these state-operated purchasing pools so that they can offer affordable health insurance to their employees;

provide states with the new option to offer ''need-based'' eligibility for Medicaid beneficiaries;

remove the federal cap on non-waivered SCHIP coverage; and

offer federal income tax credits and premium subsidies for those currently uninsured whose income is at or below 200 percent of the federal poverty level and who are ineligible for Medicaid for SCHIP coverage or other insurance options.

These and other provisions of your proposal demonstrate your longstanding commitment to the health of everyone in this country and we are pleased and honored to support you in this effort.

Sincerely,
WARREN A. JONES, M.D., FAAFP,
Board Chair.

AMERICAN ACADEMY OF PEDIATRICS,
Washington, DC, May 7, 2003.

Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR BINGAMAN: On behalf of the 57,000 pediatrician members of the American Academy of Pediatrics (AAP), I write today in support of the Health Coverage, Affordability, Responsibility and Equity Act of 2003.

The problem of the uninsured and underinsured is real and growing. This legislation is an effective way to provide greater access to comprehensive health care for more Americans. This legislation would allow poor and near poor families a variety of options for affordable and comprehensive health coverage.

The Academy especially appreciates the effort to strengthen, not undermine current public programs. Currently, more than 9 million children are uninsured in this country and million more are uninsured for part of the year, churning on and off of health coverage. Seventy percent of the uninsured children are eligible for public programs but unenrolled. This legislation would encourage greater enrollment of these uninsured children by providing financial incentives to the states to enroll and retain these children, and by allowing families to unify their health coverage.

Thank you for your leadership and commitment to our nation's families and their access to quality health care. We look forward to our continued work together.

Sincerely,
E. STEPHEN EDWARDS, M.D.,
President.

AMERICAN GERIATRICS SOCIETY,
New York, NY, April 22, 2003.

Hon. Jeff Bingaman
U.S. Senate,
Washington, DC.

DEAR SENATOR BINGAMAN: The American Geriatrics Society (AGS), an organization of over 6,000 geriatricians and other health professionals who are specially trained in the management of care for frail, chronically ill older patients, is pleased to endorse the Health CARE Act of 2003. We commend you for your sponsorship of this important bill, which seeks to improve health coverage for millions of uninsured Americans.

By simplifying and expanding coverage choices for uninsured individuals and small businesses, your legislation represents a balanced approach to confronting one of our nation's most pressing problems. The consequences of having little or no health insurance are well documented. People without coverage are less likely to have a regular source of care, don't receive recommended health screening services nor do they have appropriate care management for chronic conditions. As a result, uninsured patients often are sicker and are more likely to die sooner than people who have health insurance. Adults in late middle age are especially susceptible to deteriorating health if they never had or lose their health insurance coverage.

The Health CARE Act of 2003 would improve the health of million of Americans expanding their access to health insurance coverage. AGS applauds your willingness to tackle this complex issue and looks forward to working with you to enact this bill.

Sincerely,
JERRY JOHNSON, MD,
President.

APRIL 28, 2003.

Hon. JEFF BINGAMAN,
U.S. Senate, 703 Hart Senate Office Building, Washington, DC 20510.

DEAR SENATOR BINGAMAN: Congratulations on your introduction of the HealthCARE Act of 2003. Your bill is an important initiative that seeks to combine good health policy with the politically achievable.

While Families USA, the national consumer health organization, has historically supported expansions of public programs like Medicaid and SCHIP, we recognize that different approaches are necessary if we are to see the enactment of major reductions in the number of uninsured. Your bill adroitly combines (1) a federally financed expansion of Medicaid and SCHIP to cover all those under 100 percent of the federal poverty level with (2) a premium subsidy/tax credit program to help those under 200 percent of poverty buy into various health insurance plans. Further, it lays the groundwork for an expansion of insurance to the rest of society by the end of the decade.

It is imperative that Congress act as soon as possible to help the nearly one our of three non-elderly Americans who are uninsured sometime during any two-year period. Federal help with Medicaid is particularly urgent to counter the massive cutbacks in coverage by the various states during the current economic downturn. As our recent report (''Going Without Health Insurance, Nearly One in Three Non-Elderly Americans'') shows, the problem of the uninsured,

and the adverse consequences of being uninsured, are much worse than previously reported. In your State of New Mexico, for example, 602,000 people—38.6 percent of the population under age 65—were uninsured sometime in 2002–2002. Of that number, 410,000 were uninsured for more than six months.

Your bill would make a major reduction in these unacceptable numbers. It would greatly improve the quality of health and security in America, and we look forward to working with you towards its enactment.

Sincerely,

RONALD F. POLLACK,
Executive Director.

S. 1030

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Health Coverage, Affordability, Responsibility, and Equity Act of 2003''or the ''HealthCARE Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—INCREASING HEALTH CARE COVERAGE

Subtitle A—Medicaid and SCHIP

SEC. 101. STATE OPTION TO OFFER MEDICAID COVERAGE BASED ON NEED.

(a) STATE OPTION.—Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a) is amended—

(1) by striking ''or'' at the end of subclause (XVII);

(2) by adding ''or'' at the end of subclause (XVIII); and

(3) by adding at the end the following:

''(XIX) who are not otherwise eligible for medical assistance under this title and whose income does not exceed such income level as the State may establish, expressed as a percentage (not to exceed 100) of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved;''.

(b) INCREASED FMAP.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(1) in the first sentence of subsection (b)—

(A) by striking ''and (4)'' and inserting ''(4)''; and

(B) by inserting before the period the following: '', and (5) in the case of a State that meets the conditions described in paragraph (1) of subsection (x), the Federal medical assistance percentage shall be equal to the need-based enhanced FMAP described in paragraph (2) of subsection (x)''; and

(2) by adding at the end the following:

''(x)(1) For purposes of clause (5) of the first sentence of subsection (b), the conditions described in this subsection are the following:

''(A) The State provides medical assistance to individuals described in subsection (a)(10)(A)(ii)(XIX).

''(B) The State uses streamlined enrollment and outreach measures to all individuals described in subparagraph (A) including—

''(i) the same application and retention procedures (such as 1-page enrollment forms and enrollment by mail) used by the majority of State programs under title XXI during the preceding year; and

''(ii) outreach efforts proportional in scope and reasonably expected effectiveness to those employed by the State during a comparable stage of implementation of the State's program under title XXI.

''(C) The State applies eligibility standards and methodologies under this title with respect to individuals residing in the State who have not attained age 65 that are not more restrictive (as determined under section 1902(a)(10)(C)(i)(III)) than the standards and methodologies that applied under this title with respect to such individuals as of July 1, 2003.

''(2)(A) For purposes of clause (5) of the first sentence of subsection (b), the need-based enhanced FMAP for a State for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of subsection (b)) for the State increased, subject to subparagraph (B), by such percentage increase as would compensate all States for the additional expenditures that would be incurred by all States if the States were to provide medical assistance to all individuals whose income does not exceed 100 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and who are eligible for such assistance only on the basis of section 1902(a)(10)(A)(ii)(XIX).

''(B) In the case of a State that provides medical assistance to individuals described in section 1902(a)(10)(A)(ii)(XIX) but limits such assistance to individuals with income at or below a percentage of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved that is less than 100, the Secretary shall reduce the need-based enhanced FMAP otherwise determined for the State under subparagraph (A) by a proportion based on the national income distribution of all individuals in all States who are (regardless of whether such individuals are enrolled under this title) eligible for medical assistance only on the basis of section 1902(a)(10)(A)(ii)(XIX).''.

(c) CONFORMING AMENDMENTS.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended in the matter preceding paragraph (1)—

(1) by striking ''or'' at the end of clause (xii);

(2) by adding ''or'' at the end of clause (xiii); and

(3) by inserting after clause (xiii) the following:

''(xiv) individuals who are eligible for medical assistance on the basis of section 1902(a)(10)(A)(ii)(XIX);''.

(d) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2004, and apply to medical assistance provided on or after that date, without regard to whether final regulations to carry out such amendments have been promulgated by such date.

SEC. 102. STATE OPTION TO PROVIDE COVERAGE OF CHILDREN UNDER SCHIP IN EXCESS OF THE STATE'S ALLOTMENT.

(a) IN GENERAL.—Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) is amended by adding at the end the following:

''SEC. 2111. STATE OPTION TO PROVIDE COVERAGE OF CHILDREN IN EXCESS OF THE STATE'S ALLOTMENT.

''(a) STATE OPTION.—In the case of a State that meets the condition described in subsection (b), the following shall apply:

''(1) Notwithstanding section 2105 and without regard to the State's allotment under section 2104, the Secretary shall pay the State an amount for each quarter equal to the enhanced FMAP of expenditures incurred in the quarter that are described in section 2105(a)(1).

''(2) The Secretary shall reduce the State's allotment under section 2104, for the first fiscal year for which the State amendment described in subsection (b) applies, and for each fiscal year thereafter, by an amount equal to the amount that the Secretary determines the State would have expended to provide child health assistance to targeted low-income children during that fiscal year if that State had not elected the State option to provide such assistance in accordance with this section.

''(3) Subsections (f) and (g) of section 2104 shall not apply to the State's reduced allotment (after the application of paragraph (2)).

''(b) CONDITION DESCRIBED.—For purposes of subsection (a), the condition described in this subsection is that the State has made an irrevocable election, through a plan amendment, to provide child health assistance to all targeted low-income children residing in the State (without regard to date of application for assistance) and to cover health services listed in the State plan whenever medically necessary.''.

(b) EFFECTIVE DATE.—The amendment made by this section takes effect on October 1, 2004, and apply to child health assistance provided on or after that date, without regard to whether final regulations to carry

out such amendment have been promulgated by such date.

Subtitle B—Refundable Tax Credit for Health Insurance Costs of Low-Income Individuals and Families

SEC. 111. CREDIT FOR HEALTH INSURANCE COSTS OF CERTAIN LOW-INCOME INDIVIDUALS.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 36 as section 37 and inserting after section 35 the following new section:

"SEC. 36. HEALTH INSURANCE COSTS OF ELIGIBLE LOW-INCOME INDIVIDUALS.

''(a) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the applicable percentage of the amount paid by the taxpayer (or on behalf of the taxpayer) for coverage of the taxpayer or qualifying family members under qualified health insurance for eligible coverage months beginning in such taxable year.

''(b) APPLICABLE PERCENTAGE.—For purposes of this section—

''(1) IN GENERAL.—Subject to paragraph (2), the term 'applicable percentage' means the standard Government contribution (determined for full-time Federal employees enrolling in coverage for which such contribution is not limited by section 8906(b)(1) of title 5, United States Code) for an employee enrolled in a health benefits plan under chapter 89 of title 5, United States Code, for the calendar year in which the taxable year begins, expressed as a percentage of the total premium for such plan.

''(2) INCREASED PERCENTAGE FOR CERTAIN TAXPAYERS.—

''(A) IN GENERAL.—In the case of a taxpayer whose adjusted gross income for the preceding taxable year does not exceed 150 percent of the poverty level, the applicable percentage determined under paragraph (1) shall be increased by such percentage points as the Secretary determines will fully compensate such an individual for the individual's limited purchasing power in comparison to individuals whose adjusted gross income equals the average adjusted gross income for all Federal employees, to the extent that the amount of the resulting increase in the credit amount for all such eligible low-income individuals for the taxable year is not reasonably expected to exceed the 5 percentage point dollar amount for that year, as determined under subparagraph (B).

''(B) DETERMINATION OF 5 PERCENTAGE POINT DOLLAR AMOUNT.—For purposes of subparagraph (A), the 5 percentage point dollar amount for any taxable year is the product of—

''(i) the total number of individuals receiving credits under this section for such year, and

''(ii) the amount equal to 5 percent of the average health insurance premium amount to which such credits are applied.

''(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to prevent the Secretary from establishing more than 1 level of supplemental assistance that provides greater assistance to individuals with lower income, determined as a percentage of poverty.

''(3) APPLICATION OF FEHBP COVERAGE CATEGORIES TO DETERMINATION OF CREDIT.—The percentages described in paragraphs (1) and (2) shall be applied to a taxpayer consistent with the coverage categories (such as self or family coverage) applied with respect to a health benefits plan under chapter 89 of title 5, United States Code.

''(c) MAXIMUM PREMIUM AMOUNT.—The amount paid for qualified health insurance taken into account under subsection (a) for any taxable year shall not exceed an amount equal to the capped premium established for the applicable State under section 204(c)(10) of the Health Coverage, Affordability, Responsibility, and Equity Act of 2003 for the calendar year in which the such taxable year begins.

''(d) ELIGIBLE COVERAGE MONTH.—For purposes of this section—

''(1) IN GENERAL.—The term 'eligible coverage month' means any month if during such month the taxpayer or a qualifying family member—

''(A) is an eligible low-income individual,

''(B) is covered by qualified health insurance, the premium for which is paid by the taxpayer (or on behalf of the taxpayer),

''(C) does not have other specified coverage, and

''(D) is not imprisoned under Federal, State, or local authority.

''(2) JOINT RETURNS.—In the case of a joint return, the requirement of paragraph (1)(A) shall be treated as met with respect to any month if at least 1 spouse satisfies such requirement.

''(e) ELIGIBLE LOW-INCOME INDIVIDUAL.—For purposes of this section—

''(1) IN GENERAL.—The term 'eligible low-income individual' means an individual—

''(A) who has not attained age 65,

''(B) whose adjusted gross income does not exceed 200 percent of the poverty level,

''(C) who is ineligible for the medicaid program or the State children's health insurance program under title XIX or XXI of the Social Security Act (other than under section 1928 of such Act),

''(D) who has limited access to health insurance coverage through the employer of the individual or a member of the individual's family (either because the employer does not offer such coverage to the individual or because the employee contribution for such coverage would exceed an amount equal to 5 percent of the household income of such individual, as determined in accordance with paragraph (2)),

''(E) who applies for a credit under this section not later than 60 days after receiving notice of potential eligibility for such credit, under procedures established by the Secretary, and

''(F) who resides in a State where the eligibility standards and methodologies applied under the medicaid and State children's health insurance programs with respect to individuals residing in the State who have not attained age 65 are not more restrictive (as determined under section 1902(a)(10)(C)(i)(III) of the Social Security Act) than the standards and methodologies that applied under such programs with respect to such individuals as of July 1, 2003.

''(2) DETERMINATION OF ELIGIBILITY.—

''(A) SCHIP AGENCY.—

''(i) IN GENERAL.—The determination of whether an individual is an eligible low-income individual for purposes of this section shall be made by the State agency with responsibility for determining the eligibility of individuals for assistance under the State children's health insurance program under title XXI of the Social Security Act.

''(ii) APPLICATION OF SCREEN AND ENROLL REQUIREMENTS.—

''(I) IN GENERAL.—The State agency referred to in clause (i) shall ensure that individuals applying for a certificate of eligibility are screened for potential eligibility under the medicaid and State children's health insurance programs and that individuals found through screening to be eligible for assistance under such a program are enrolled for assistance under the appropriate program. To the maximum extent possible pursuant to State options under title XIX of the Social Security Act, and notwithstanding any otherwise applicable provision of, or State plan provision under, such title, screening and enrollment activities described in the previous sentence shall use the procedures employed by the State children's health insurance program operated under title XXI of the Social Security Act, if such procedures differ from those ordinarily employed by the State program operated under title XIX of such Act.

''(II) NO DELAY OF ISSUANCE OF CERTIFICATE.—The application of the screen and enroll requirements of clause (i) shall not delay the issuance of a certificate of eligibility to an individual for purposes of this section. The State agency referred to in clause (i) shall adopt procedures to ensure than an individual issued a certificate of eligibility under this paragraph who is subsequently determined to be eligible for the State medicaid program under title XIX of the Social Security Act or the State children's health insurance program under XXI of such Act shall be enrolled in the appropriate program without an interruption in the individual's health insurance coverage.

''(B) STANDARDS.—

''(i) IN GENERAL.—An individual is an eligible low-income individual for purposes of this section if—

''(I) on the basis of the individual's tax return for the preceding taxable year, the individual meets the requirements of paragraph (1)(B), and the individual otherwise satisfies the requirements of paragraph (1), or

''(II) the individual is determined to satisfy the requirements of paragraph (1) after the application of the same eligibility methodologies as would apply for purposes of determining the eligibility of an individual for assistance under the State children's health insurance program under title XXI of the Social Security Act.

''(ii) APPLICATION OF SCHIP INCOME DETERMINATION METHODOLOGIES.—For purposes of clause (i)(II), determinations of income levels shall be made using the methodologies described in that clause, to the extent such methodologies for ascertaining household income differ from any otherwise applicable method for determining adjusted gross income or the definition of adjusted gross income.

''(C) CERTIFICATE OF ELIGIBILITY.—

''(i) IN GENERAL.—An individual who is determined to be an eligible low-income individual shall be issued a certificate of eligibility by the State agency referred to in subparagraph (A).

''(ii) CERTIFICATE AMOUNT.—Such certificate shall indicate the applicable percentage of the amount paid for coverage under qualified health insurance that the individual is eligible for under this section (including any supplemental assistance which the individual may be eligible for under subsection (b)(2), unless the individual elects to not receive such supplemental assistance).

''(iii) 12-MONTH PERIOD OF ISSUE.—The certificate of eligibility shall apply for a 12-month period from the date of issue, notwithstanding any changes in household circumstances following the individual's application for a credit under this section or supplemental assistance.

''(D) SUPPLEMENTAL ASSISTANCE.—The State agency described in subparagraph (A) shall determine an individual's eligibility for supplemental assistance under subsection (b)(2) based on the methodologies referred to in subparagraph (B)(ii).

''(f) QUALIFYING FAMILY MEMBER.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualifying family member' means—

''(A) the taxpayer's spouse, and

''(B) any dependent of the taxpayer with respect to whom the taxpayer is entitled to a deduction under section 151(c).

Such term does not include any individual who is not an eligible low-income individual under subsection (e)(1).

''(2) SPECIAL DEPENDENCY TEST IN CASE OF DIVORCED PARENTS, ETC.—If paragraph (2) or (4) of section 152(e) applies to any child with respect to any calendar year, in the case of any taxable year beginning in such calendar year, such child shall be treated as described in paragraph (1)(B) with respect to the custodial parent (within the meaning of section 152(e)(1)) and not with respect to the noncustodial parent.

''(g) QUALIFIED HEALTH INSURANCE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified health insurance' means any of the following:

''(A) Coverage under an insurance plan participating in a purchasing pool established pursuant to section 203 of the Health Coverage, Affordability, Responsibility, and Equity Act of 2003.

''(B) Coverage under individual health insurance pursuant to section 212 of such Act.

''(C) Coverage, pursuant to section 213 of such Act, under the medicaid program or the State children's health insurance program if 1 or more family members qualifies for coverage under such program.

''(D) Coverage, pursuant to section 214 of such Act, under an employer-sponsored insurance plan, including—

''(i) coverage under a COBRA continuation provision (as defined in section 9832(d)(1)),

''(ii) State-based continuation coverage provided under a State law that requires such coverage,

''(iii) coverage voluntarily offered by a former employer of the individual or family member; or

''(iv) coverage under a group health plan that is available through the employment of the individual or a family member.

''(2) EXCEPTION.—The term 'qualified health insurance' shall not include—

''(A) a flexible spending or similar arrangement, and

''(B) any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c).

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) EMPLOYER-SPONSORED INSURANCE.—

''(i) IN GENERAL.—The term 'employer-sponsored insurance' means any insurance which covers medical care under any health plan maintained by any employer (or former employer) of the taxpayer or the taxpayer's spouse.

''(ii) TREATMENT OF CAFETERIA PLANS.—For purposes of clause (i), the cost of coverage shall be treated as paid or incurred by an employer to the extent the coverage is in lieu of a right to receive cash or other qualified benefits under a cafeteria plan (as defined in section 125(d)).

''(B) INDIVIDUAL HEALTH INSURANCE.—The term 'individual health insurance' means any insurance which constitutes medical care offered to individuals other than in connection with a group health plan and does not include Federal- or State-based health insurance coverage.

''(h) OTHER SPECIFIED COVERAGE.—For purposes of this section, an individual has other specified coverage for any month if, as of the first day of such month—

''(1) COVERAGE UNDER MEDICARE.—Such individual is entitled to benefits under part A of title XVIII of the Social Security Act or is enrolled under part B of such title.

''(2) CERTAIN OTHER COVERAGE.—Such individual—

''(A) is enrolled in a health benefits plan under chapter 89 of title 5, United States Code, or

''(B) is entitled to receive benefits under chapter 55 of title 10, United States Code.

''(i) FEDERAL POVERTY LEVEL; POVERTY LEVEL; POVERTY.—For purposes of this section, the terms 'Federal poverty level' , 'poverty level', and 'poverty' mean the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

''(j) SPECIAL RULES.—

''(1) COORDINATION WITH ADVANCE PAYMENTS OF CREDIT.—With respect to any taxable year, the amount which would (but for this subsection) be allowed as a credit to the taxpayer under subsection (a) shall be reduced (but not below zero) by the aggregate amount paid on behalf of such taxpayer under section 7528 for months beginning in such taxable year.

''(2) COORDINATION WITH OTHER DEDUCTIONS.—Amounts taken into account under subsection (a) shall not be taken into account in determining any deduction allowed under section 162(l) or 213.

''(3) MSA DISTRIBUTIONS.—Amounts distributed from an Archer MSA (as defined in section 220(d)) shall not be taken into account under subsection (a).

''(4) DENIAL OF CREDIT TO DEPENDENTS.—No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

''(5) BOTH SPOUSES ELIGIBLE LOW-INCOME INDIVIDUALS.—The spouse of the taxpayer shall not be treated as a qualifying family member for purposes of subsection (a), if—

''(A) the taxpayer is married at the close of the taxable year,

''(B) the taxpayer and the taxpayer's spouse are both eligible low-income individuals during the taxable year, and

''(C) the taxpayer files a separate return for the taxable year.

''(6) MARITAL STATUS; CERTAIN MARRIED INDIVIDUALS LIVING APART.—Rules similar to the rules of paragraphs (3) and (4) of section 21(e) shall apply for purposes of this section.

''(7) INSURANCE WHICH COVERS OTHER INDIVIDUALS.—For purposes of this section, rules similar to the rules of section 213(d)(6) shall apply with respect to any contract for qualified health insurance under which amounts are payable for coverage of an individual other than the taxpayer and qualifying family members.

''(8) TREATMENT OF PAYMENTS.—For purposes of this section:

''(A) PAYMENTS BY SECRETARY.—Any payment made by the Secretary on behalf of any individual under section 7528 (relating to advance payment of credit for health insurance costs of eligible low-income individuals) shall be treated as having been made by the taxpayer (or on behalf of the taxpayer) on the first day of the month for which such payment was made.

''(B) PAYMENTS BY TAXPAYER.—Any payment made by the taxpayer (or on behalf of the taxpayer) for eligible coverage months shall be treated as having been so made on the first day of the month for which such payment was made.

''(9) REGULATIONS.—

''(A) IN GENERAL.—The Secretary, in consultation with the Secretary of Health and Human Services, shall administer the credit allowed under this section and shall prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section, section 6050U, and section 7528.

''(B) ELIGIBILITY DETERMINATIONS.—Such regulations shall include such standards as the Secretary of Health and Human Services may specify with respect to the requirements for eligibility determinations under subsection (e)(2).

''(C) MEASURES TO COMBAT FRAUD AND ABUSE.—Such regulations shall include appropriate procedures to deter, detect, and penalize fraudulent efforts to obtain a credit under this section by individuals, providers of qualified health insurance, and others.''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period '', or from section 36 of such Code''.

(2) The table of sections for subpart C of part IV of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the last item and inserting the following new items:

''Sec. 36. Health insurance costs of eligible low-income individuals.

''Sec. 37. Overpayments of tax.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

(d) REIMBURSEMENT FOR ADMINISTRATIVE COSTS INCURRED IN DETERMINING ELIGIBILITY FOR CREDIT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall reimburse States for the reasonable administrative costs incurred in making eligibility determinations in accordance with section 36(e) of the Internal Revenue Code of 1986 (as added by subsection (a)). Such reimbursement shall not apply to State costs required under the medicaid or State children's health insurance programs.

(2) APPLICATION.—A State desiring reimbursement under this subsection shall submit an application to the Secretary of Health and Human Services in such manner, at such time, and containing such information as the Secretary may require.

(3) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated such sums as may be necessary to carry out this subsection.

SEC. 112. ADVANCE PAYMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE LOW-INCOME INDIVIDUALS.

(a) IN GENERAL.—Chapter 77 of the Internal Revenue Code of 1986 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

''SEC. 7528. ADVANCE PAYMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE LOW-INCOME INDIVIDUALS.

''(a) GENERAL RULE.—Not later than August 1, 2005, the Secretary shall establish a program for making payments on behalf of certified individuals to providers of qualified health insurance (as defined in section 36(g)) for such individuals.

''(b) LIMITATION ON ADVANCE PAYMENTS DURING ANY TAXABLE YEAR.—The Secretary may make payments under subsection (a) only to the extent that the total amount of such payments made on behalf of any individual during the taxable year is not reasonably expected to exceed the applicable percentage (as defined in section 36(b)) of the amount paid by the taxpayer (or on behalf of the taxpayer) for coverage of the taxpayer and qualifying family members under qualified health insurance for eligible coverage months beginning in the taxable year.

''(c) CERTIFIED INDIVIDUAL.—For purposes of this section, the term 'certified individual' means any individual for whom a health coverage eligibility certificate is in effect.

''(d) HEALTH COVERAGE ELIGIBILITY CERTIFICATE.—For purposes of this section, the term 'health coverage eligibility certificate' means any written statement that an individual is an eligible low-income individual (as defined in section 36(e)) if such statement provides such information as the Secretary may require for purposes of this section and is issued by the State agency responsible for administering the State children's health insurance program under title XXI of the Social Security Act.''.

(b) DISCLOSURE OF RETURN INFORMATION FOR PURPOSES OF CARRYING OUT A PROGRAM FOR ADVANCE PAYMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE LOW-INCOME INDIVIDUALS.—

(1) IN GENERAL.—Subsection (l) of section 6103 of the Internal Revenue Code of 1986 (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

''(19) DISCLOSURE OF RETURN INFORMATION FOR PURPOSES OF CARRYING OUT A PROGRAM FOR ADVANCE PAYMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE LOW-INCOME INDIVIDUALS.—The Secretary may disclose to providers of health insurance for any certified individual (as defined in section 7528(c)) return information with respect to such certified individual only to the extent necessary to carry out the program established by section 7528 (relating to advance payment of credit for health insurance costs of eligible low-income individuals).''.

(2) PROCEDURES AND RECORDKEEPING RELATED TO DISCLOSURES.—Subsection (p) of such section is amended—

(A) in paragraph (3)(A) by striking ''or (18)'' and inserting ''(18), or (19)'', and

(B) in paragraph (4), as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961), by striking ''or (17)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''(18), or (19)''.

(3) UNAUTHORIZED INSPECTION OF RETURNS OR RETURN INFORMATION.—Section 7213A(a)(1)(B) of such Code is amended by striking ''section 6103(n)'' and inserting ''subsection (l)(18) or (19) or (n) of section 6103''.

(c) INFORMATION REPORTING.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to information concerning transactions with other persons) is amended by inserting after section 6050T the following new section:

''SEC. 6050U. RETURNS RELATING TO CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE LOW-INCOME INDIVIDUALS.

''(a) REQUIREMENT OF REPORTING.—Every person who is entitled to receive payments for any month of any calendar year under section 7528 (relating to advance payment of credit for health insurance costs of eligible low-income individuals) with respect to any certified individual (as defined in section 7528(c)) shall, at such time as the Secretary may prescribe, make the return described in subsection (b) with respect to each such individual.

''(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

''(1) is in such form as the Secretary may prescribe, and

''(2) contains—

''(A) the name, address, and TIN of each individual referred to in subsection (a),

''(B) the number of months for which amounts were entitled to be received with respect to such individual under section 7528 (relating to advance payment of credit for health insurance costs of eligible low-income individuals),

''(C) the amount entitled to be received for each such month, and

''(D) such other information as the Secretary may prescribe.

''(c) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

''(1) the name and address of the person required to make such return and the phone number of the information contact for such person, and

''(2) the information required to be shown on the return with respect to such individual.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) is required to be made.''.

(2) ASSESSABLE PENALTIES.—

(A) Subparagraph (B) of section 6724(d)(1) of such Code (relating to definitions) is amended by redesignating clauses (xii) through (xviii) as clauses (xiii) through (xix), respectively, and by inserting after clause (xi) the following new clause:

''(xii) section 6050U (relating to returns relating to credit for health insurance costs of eligible low-income individuals),''.

(B) Paragraph (2) of section 6724(d) of such Code is amended by striking ''or'' at the end of subparagraph (AA), by striking the period at the end of subparagraph (BB) and inserting '', or'', and by adding after subparagraph (BB) the following new subparagraph:

''(CC) section 6050U (relating to returns relating to credit for health insurance costs of eligible low-income individuals).''.

(d) CLERICAL AMENDMENTS.—

(1) ADVANCE PAYMENT.—The table of sections for chapter 77 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 7528. Advance payment of credit for health insurance costs of eligible low-income individuals.''.

(2) INFORMATION REPORTING.—The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6050T the following new item:

''Sec. 6050U. Returns relating to credit for health insurance costs of eligible low-income individuals.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2006.

TITLE II—IMPROVING ACCESS TO HEALTH PLANS

SEC. 201. DEFINITIONS.

In this title:

(1) ELIGIBLE INDIVIDUAL.—The term ''eligible individual'' means an individual with respect to whom a tax credit is allowed under section 36 of the Internal Revenue Code of 1986 (as added by section 111).

(2) PARTICIPATING INSURER.—The term ''participating insurer'' means an entity with a contract under section 205(a).

(3) PRIVATE GROUP HEALTH INSURANCE PLAN.—The term ''private group health insurance plan'' means a plan offered by a participating insurer that provides health benefits coverage to eligible individuals and that meets the requirements of this title.

(4) PURCHASING POOL OPERATOR.—The term ''purchasing pool operator'' means the entity designated by the State under section 204.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(6) SMALL EMPLOYER.—The term ''small employer'' means an employer with not less than 2 and not more than 100 employees.

SEC. 202. ESTABLISHMENT OF HEALTH INSURANCE PURCHASING POOLS.

There is established a program under which the Secretary shall ensure that each eligible individual has the opportunity to enroll, through a purchasing pool operator, in a private group health insurance plan offered by a participating insurer under this title.

SEC. 203. PURCHASING POOLS.

(a) ESTABLISHMENT OF PURCHASING POOLS.—Each State participating in the program under this title shall establish a purchasing pool that is available to each eligible individual who resides in the State.

(b) TYPES OF PURCHASING POOLS.—

(1) IN GENERAL.—A purchasing pool established under subsection (a) shall be 1 of the following:

(A) A statewide purchasing pool operated by the State.

(B) A statewide purchasing pool operated on behalf of the State by the Director of the Office of Personnel Management, or the designee of such Director.

(2) OPM OPERATED POOL.—In the case of a statewide purchasing pool described in paragraph (1)(B), the Director of the Office of Personnel Management or the Director's designee, may limit participating insurers in such pool to those described in section 205(e), except that the Director or such designee shall ensure that additional private group health insurance plans participate in such a pool to the extent necessary to meet the requirements of section 204(c)(9).

(c) STATE ELECTION PROCESS.—

(1) IN GENERAL.—Each State participating in the program under this title shall notify the Secretary, not later than January 4, 2005, of the type of purchasing pool that applies to residents of the State.

(2) DEFAULT CHOICE.—If a State participating in the program under this title fails to notify the Secretary of the type of purchasing pool elected by the State by the date described in paragraph (1), the State shall be deemed to have elected the type of purchasing pool described in subsection (b)(1)(B).

(3) CHANGE OF ELECTION.—The Secretary shall establish procedures under which a State participating in the program under this title may change the election of the type of purchasing pool applicable to residents of the State.

SEC. 204. PURCHASING POOL OPERATORS.

(a) DESIGNATION.—Each State shall designate a purchasing pool operator that shall be responsible for operating the purchasing pool established under section 203(a). A purchasing pool operator may be (or, to have 1 or more of its functions performed, may contract with) a private entity that has entered into a contract with the State if such entity meets requirements established by the Secretary for purposes of the program under this title.

(b) OPERATION SIMILAR TO FEHBP.—Each purchasing pool operator shall operate the purchasing pool established under section 203(a) in a manner that is similar to the manner in which the Director of the Office of Personnel Management operates the Federal employees' health benefits program under chapter 89 of title 5, United States Code, including (but not limited to) the performance of the specific functions described in subsection (c).

(c) SPECIFIC FUNCTIONS DESCRIBED.—The specific functions described in this subsection include the following:

(1) Each purchasing pool operator shall offer one-stop shopping for eligible individuals to enroll for health benefits coverage

under private, group health insurance plans offered by participating insurers.

(2) Each purchasing pool operator shall limit participating insurers to those that meet the conditions for participation described in this title.

(3) Each purchasing pool operator shall negotiate (or, in the case of a purchasing pool described in section 203(b)(1)(B), shall negotiate or otherwise determine) bids and terms of coverage with insurers.

(4) Each purchasing pool operator shall provide eligible individuals with comparative information on private group health insurance plans offered by participating insurers.

(5) Each purchasing pool operator shall assist eligible individuals in enrolling with a private group health insurance plan offered by a participating insurer.

(6) Each purchasing pool operator shall collect private group health insurance plan premium payments for participating insurers and process such premium payments.

(7) Each purchasing pool operator shall reconcile from year to year aggregate premium payments and claims costs of private group health insurance plans consistent with practices under the Federal employees' health benefits program under chapter 89 of title 5, United States Code.

(8) Each purchasing pool operator shall offer customer service to eligible individuals enrolled for health benefits coverage under a private group health insurance plan offered by a participating insurer.

(9) Each purchasing pool operator shall ensure that each eligible individual has the option of enrolling in either of at least 2 benchmark or benchmark-equivalent plans with—

(A) a premium at or below a cap established by the pool operator for purposes of this title; and

(B) coverage of essential services included in the report required under section 301(e)(2), with cost-sharing consistent with such report.

(10) Each purchasing pool operator shall establish a premium cap for purposes of determining the credit limitation under section 36(c) of the Internal Revenue Code of 1986, as added by section 111(a). The cap required under this paragraph may not be less than the premium charged to Federal employees by the most highly-enrolled health plan under the Federal employees' health benefits program under chapter 89 of title 5, United States Code. If the most highly-enrolled plan in that program differs for Federal enrollees in the State and all Federal enrollees nationally in such plan, the minimum permitted premium cap shall be the lower of such premiums.

SEC. 205. CONTRACTS WITH PARTICIPATING INSURERS.

(a) IN GENERAL.—Each purchasing pool operator shall negotiate and enter into contracts for the provision of health benefits coverage under the program under this title with entities that meet the conditions of participation described in subsection (b) and other applicable requirements of this Act.

(b) CONSUMER INFORMATION.—In carrying out its duty under section 204(c)(4) to inform eligible individuals about private group health plans, the purchasing pool operator shall provide information that meets the requirements of section 212(b)(2).

(c) STATE LICENSURE.—

(1) IN GENERAL.—Subject to paragraph (2), a health plan shall not be a participating insurer unless the plan has a State license to provide State residents with the private group coverage health insurance plans that it offers through the pool.

(2) EXCEPTION.—A pool operator may enter into a contract under subsection (a) to cover pool participants through a health plan without a State license described in paragraph (1) if such plan is offered to Federal employees nationwide and, with respect to such employees, is exempt from State health insurance regulation. Nothing in this paragraph shall be construed to permit coverage of pool participants through such a plan except with groups, contracts, and premium rates that are entirely distinct from those used for individuals covered under the Federal employee's health benefits program under chapter 89 of title 5, United States Code.

(d) ADDITIONAL STOP-LOSS COVERAGE AND REINSURANCE.—Purchasing pool operators are authorized to encourage participation in the program under this title, improve covered benefits, reduce out-of-pocket cost-sharing, limit premiums, or achieve other objectives of this Act by—

(1) funding stop-loss coverage above levels otherwise offered in the purchasing pool; or

(2) providing or subsidizing reinsurance in addition to that provided under section 211.

(e) PARTICIPATION OF FEHBP PLANS.—

(1) IN GENERAL.—Each entity with a contract under section 8902 of title 5, United States Code, shall be a participating insurer unless such entity notifies the Secretary in writing of its intention not to participate in the program under this title prior to such time as is designated by the Secretary so as to allow such decisions to be taken into account with respect to eligible individuals' choice of a private group health insurance plan under such program. Such participation in the program under this title shall include at least the covered benefits and provider networks available through such an entity and shall not involve greater out-of-pocket cost-sharing than the plan offered by such entity pursuant to its contract under section 8902 of title 5, United States Code.

(2) NO EFFECT ON FEHBP COVERAGE.—The Director of Office of Personnel Management shall take such steps as are necessary to ensure that each individual enrolled for health benefits coverage under the program under chapter 89 of title 5, United States Code, is not adversely affected by eligible individuals or others enrolled for coverage under the program under this title. Such steps shall include (but need not be limited to) the establishment of separate risk pools, separate contracts with participating insurers, and separately negotiated premiums.

SEC. 206. OPTIONS FOR HEALTH BENEFITS COVERAGE.

(a) SCOPE OF HEALTH BENEFITS COVERAGE.—The health benefits coverage provided to an eligible individual under a private group health insurance plan offered by a participating insurer shall consist of any of the following:

(1) BENCHMARK COVERAGE.—Health benefits coverage that is equivalent to the benefits coverage in a benchmark benefit package described in subsection (b).

(2) BENCHMARK-EQUIVALENT COVERAGE.—Health benefits coverage that meets the following requirements:

(A) INCLUSION OF ESSENTIAL SERVICES.—The coverage includes each of the essential services identified by the National Advisory Commission on Expanded Access to Health Care and adopted by Congress under title III.

(B) AGGREGATE ACTUARIAL VALUE EQUIVALENT TO BENCHMARK PACKAGE.—The coverage has an aggregate actuarial value that is equal to or greater than the actuarial value of one of the benchmark benefit packages.

(3) ALTERNATIVE COVERAGE.—Any other health benefits coverage that the Secretary determines, upon application by a State, offers health benefits coverage equivalent to or greater than a plan described in and offered under section 8903(1) of title 5, United States Code.

(b) BENCHMARK BENEFIT PACKAGES.—The benchmark benefit packages are as follows:

(1) FEHBP-EQUIVALENT HEALTH BENEFITS COVERAGE.—The plan described in and offered under chapter 89 of title 5, United States Code with the highest number of enrollees under such section for the year preceding the year in which the private group health insurance plan is proposed to be offered.

(2) PUBLIC PROGRAM-EQUIVALENT HEALTH BENEFITS COVERAGE.—Coverage provided under the State plan approved under the medicaid program under title XIX of the Social Security Act or the State children's health insurance program under title XXI of such Act (42 U.S.C. 1396 et seq., 1397aa et seq.) (without regard to coverage provided under a waiver of the requirements of either such program).

(3) COVERAGE OFFERED THROUGH HMO.—The health insurance coverage plan that—

(A) is offered by a health maintenance organization (as defined in section 2791(b)(3) of the Public Health Service Act (42 U.S.C. 33gg–91(b)(3))), and

(B) has the largest insured commercial, nonmedicaid enrollment of covered lives of such coverage plans offered by such a health maintenance organization in the State.

(4) STATE EMPLOYEE COVERAGE.—The health insurance plan that is offered to State employees and has the largest enrollment of covered lives of any such plan.

(5) APPLICATION OF BENCHMARK STANDARDS.—A private group health plan offers benchmark benefits if, with respect to a benchmark plan described in paragraph (1), (2), (3), or (4), the private group health plan covers all items and services offered by the benchmark plan, with out-of-pocket cost-sharing for such items and services that is not greater than under the benchmark plan. Nothing in this title shall be construed to forbid a private group health plan from offering additional items and services not covered by such a benchmark plan or reducing out-of-pocket cost-sharing below levels applicable under such plan.

SEC. 207. ENROLLMENT PROCESS FOR ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—The Secretary shall establish a process through which an eligible individual—

(1) may make an annual election to enroll in any private group health insurance plan offered by a participating insurer that has been awarded a contract under section 205(a) and serves the geographic area in which the individual resides, provided that such insurer's geographic area of service and guaranteed issuance under this section is conterminous with, or includes all of, a geographic area served pursuant to an entity's contact under section 8902 of title 5, United States Code; and

(2) may make an annual election to change the election under this clause.

(b) RULES.—In establishing the process under subsection (a), the Secretary shall use rules similar to the rules for enrollment, disenrollment, and termination of enrollment under the Federal employees health benefits program under chapter 89 of title 5, United States Code, including the application of the guaranteed issuance provision described in subsection (c).

(c) GUARANTEED ISSUANCE.—An eligible individual who is eligible to enroll for health benefits coverage under a private group health insurance plan that has been awarded a contract under section 205(a) at a time during which elections are accepted under this title with respect to the plan shall not be denied enrollment based on any health status-related factor (described in section 2702(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1))) or any other factor.

SEC. 208. PLAN PREMIUMS.

(a) IN GENERAL.—Each purchasing pool operator shall negotiate (or, in the case of a purchasing pool operated pursuant to section 203(b)(1)(B), shall otherwise determine) a premium for each private group health insurance plan offered by a participating insurer.

(b) PERMITTED PROFIT MARGINS.—

(1) IN GENERAL.—Each premium negotiated under subsection (a) may not permit a profit margin that exceeds the applicable percentage (as defined in paragraph (2)).

(2) APPLICABLE PERCENTAGE DEFINED.—In this subsection, the term ''applicable percentage'' means—

(A) for the first 3 years that a purchasing pool is operated, 2 percent;

(B) for any subsequent year, the percentage determined by the purchasing pool operator, which may not be—

(i) less than the profit margin permitted under the Federal employees health benefits program under chapter 89 of title 5, United States Code; or

(ii) more than a multiple, established by the Secretary for purposes of this subsection, of profit margins permitted under such program.

SEC. 209. ENROLLEE PREMIUM SHARE.

(a) IN GENERAL.—A participating insurer offering a private group health insurance plan that has been awarded a contract under section 205(a) in which the eligible individual is enrolled may not deny, limit, or condition the coverage (including out-of-pocket cost-sharing) or provision of health benefits coverage or vary or increase the enrollee premium share under the plan based on any health status-related factor described in section 2702(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)) or any other factor.

(b) RISK-ADJUSTED PLAN PAYMENTS AND PREMIUMS CHARGED TO ENROLLEES.—

(1) IN GENERAL.—For each private group health insurance plan operated by a participating insurer, the pool operator shall adjust premium payments to compensate for the difference in health risk factors between plan enrollees and State residents as a whole (including residents who are not eligible individuals). Such adjustments shall employ risk-adjustment mechanisms promulgated by the Secretary.

(2) ADDITIONAL ADJUSTMENTS.—The pool operator shall also provide additional adjustments to premium payments that compensate participating insurers for the cost of keeping out-of-pocket cost-sharing amounts consistent with section 204(c)(9)(B).

(3) ENROLLEE PREMIUM COSTS.—The adjustments described in this subsection shall not affect enrollee premium shares, which shall be based on the premium that would be charged for enrollees with health risk factors for State residents as a whole (as described in paragraph (1)), without taking into account cost-sharing adjustments under section 204(c)(9)(B).

(c) AMOUNT OF PREMIUM.—The amount of the enrollee premium share shall be equal to premium amounts (if any) above the applicable cap set pursuant to section 204(c)(10), plus 100 percent of the remainder minus the applicable percentage (as defined in section 36(b) of the Internal Revenue Code of 1986, as added by section 111).

SEC. 210. PAYMENTS TO PURCHASING POOL OPERATORS AND PAYMENTS TO PARTICIPATING INSURERS.

The Secretary shall establish procedures for making payments to each purchasing pool operator as follows:

(1) RISK-ADJUSTMENT PAYMENT.—The Secretary shall pay each purchasing pool operator for the net costs of risk-adjusted payments to plans under section 209(b), to the extent the sum of upward adjustments exceeds the sum of downward adjustments for the pool operator.

(2) STOP-LOSS AND REINSURANCE PAYMENTS.—

(A) IN GENERAL.—The Secretary shall pay each purchasing pool operator for the applicable percentage (as defined in subparagraph (B)) of—

(i) the costs of any stop-loss coverage funded by the purchasing pool operator under section 205(d)(1); and

(ii) any reinsurance provided in accordance with section 205(d)(2).

(B) APPLICABLE PERCENTAGE DEFINED.—In this paragraph, the term ''applicable percentage'' means—

(i) for the first 3 years that a purchasing pool is operated, 100 percent;

(ii) for the next 2 years that such purchasing pool is operated, 50 percent; and

(iii) for any subsequent year, 0 percent.

(3) PAYMENTS NECESSARY TO KEEP COST-SHARING WITHIN APPLICABLE LIMITS.—The Secretary shall make payments to purchasing pool operators to reimburse purchasing pool operators for the amount paid by such operators to participating insurers necessary to keep out-of-pocket cost-sharing for individuals with limited ability to pay within applicable limits.

(4) PAYMENT FOR ADMINISTRATIVE COSTS.—The Secretary shall make payments to each purchasing pool operator for necessary pool administrative expenses.

(5) PAYMENTS TO OPM.—In the case of a purchasing pool described in section 203(b)(1)(B), payments under this section shall be made to the Director of the Office of Personnel Management.

SEC. 211. STATE-BASED REINSURANCE PROGRAMS.

(a) ESTABLISHMENT.—The Secretary shall establish standards for State-based reinsurance programs for eligible individuals to guard against adverse selection and to improve the functioning of the individual health insurance market.

(b) GRANTS FOR STATEWIDE REINSURANCE PROGRAMS.—

(1) IN GENERAL.—The Secretary may award grants to States for the reasonable costs incurred in providing reinsurance under this section, consistent with standards developed by the Secretary, for coverage offered in the individual health insurance market and through State-based purchasing pools described in section 203.

(2) LIMITATION.—Such grants may not pay for reinsurance extending beyond individuals in the top 3 percent of the national health care spending distribution, as determined by the Secretary.

(3) APPLICATION.—A State desiring a grant under this section shall submit an application to the Secretary in such manner, at such time, and containing such information as the Secretary may require.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for making grants under this section.

SEC. 212. COVERAGE UNDER INDIVIDUAL HEALTH INSURANCE.

(a) IN GENERAL.—Eligible individuals may use credits allowed under the Internal Revenue Code of 1986 (including supplemental assistance provided under such Code) for the purchase of health insurance coverage to enroll in State-licensed individual health insurance meeting the conditions of participation described in subsection (b).

(b) CONDITIONS OF PARTICIPATION.—The Secretary shall promulgate regulations that establish the terms and conditions under which an entity may participate in the program under this section and that include the following:

(1) PLAN MARKETING.—Conditions of participation for plans in the individual market (as developed by the Secretary) that—

(A) ensure that consumers receive the consumer information described in paragraph (2) before selecting a plan; and

(B) detect, deter, and penalize marketing fraud by entities offering or purporting to offer individual insurance.

(2) CONSUMER INFORMATION.—Requirements for each entity offering individual insurance to provide eligible individuals with information in a uniform and easily comprehensible manner that allows for informed comparisons by eligible individuals and that includes information regarding the health benefits coverage, costs, provider networks, quality, the amount and proportion of health insurance premium payments that go directly to patient care, and the plan's coverage rules (including amount, duration, and scope limits) and out-of-pocket cost-sharing (both inside and outside plan networks) for each essential service recommended by the National Advisory Commission on Expanded Access to Health Care and adopted by Congress under title III (which shall be prominently identified as an essential service, including by reference to the Commission recommendation denoting the service as essential). To the maximum extent feasible, such requirements shall specify that the content and presentation of the information shall be provided in the same manner as similar information is presented to enrollees in the Federal employees health benefits program under chapter 89 of title 5, United States Code.

(3) OTHER CONDITIONS, INCLUDING THE ELIMINATION OF BARRIERS TO AFFORDABLE COVERAGE.—

(A) IN GENERAL.—Requirements for each entity offering individual insurance to abide by conditions of participation that the Secretary believes are reasonable and appropriate measures to address barriers to affordable health insurance coverage.

(B) SPECIFIC CONDITIONS.—The requirements developed by the Secretary under subparagraph (A) shall include (but need not be limited to)—

(i) guaranteed renewability, without premium increases based on changed individual risk; and

(ii) limits on risk rating.

(4) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to authorize the Secretary to impose any requirements on individual insurance, except with respect to eligible individuals purchasing individual insurance using advance payment of a tax credit provided under section 36 of the Internal Revenue Code of 1986.

SEC. 213. USE OF PREMIUM SUBSIDIES TO UNIFY FAMILY COVERAGE WITH MEMBERS ENROLLED IN MEDICAID AND SCHIP.

Notwithstanding any other provision of law, the Secretary shall establish procedures under which, in the case of a family with 1 or more members enrolled in with a managed care entity under the State medicaid program under title XIX of the Social Security Act or the State children's health insurance program under title XXI of such Act (42 U.S.C. 1396 et seq., 1397aa et seq.) and 1 or more members who are an eligible individual under this title, the family shall have the option to enroll all family members with the managed care entity under either or both such State programs. The procedures established by the Secretary shall provide that premiums charged to eligible individuals for enrollment with such an entity shall be based on the capitated payments established for adults or children, excluding adults and children who are known to be pregnant, blind, disabled, or (in the case of adults) elderly, under the applicable State program

(except that, in the case of an eligible individual known to be pregnant, premiums shall reflect capitated payments established under such State program for individuals known to be pregnant) plus reasonable administrative costs.

SEC. 214. COVERAGE THROUGH EMPLOYER-SPONSORED HEALTH INSURANCE.

(a) IN GENERAL.—Eligible individuals may use credits allowed under the Internal Revenue Code of 1986 and supplemental assistance to enroll in coverage offered by eligible employers.

(b) ELIGIBLE EMPLOYERS.—For purposes of this section, the term ''eligible employers'' includes the following:

(1) The current employer of the eligible individual or a member of such individuals family.

(2) A former employer required to offer coverage of the eligible individual under a COBRA continuation provision (as defined in section 9832(d)(1) of the Internal Revenue Code) or a State law requiring continuation coverage; and

(3) A former employer voluntarily offering coverage of the eligible individual.

(c) APPLICATION OF DISREGARD OF PREEXISTING CONDITIONS EXCLUSIONS.—Notwithstanding any other provision of law, in the case of an individual who experiences a qualifying event (as defined in section 603 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1163) and who, not later than 6 months after such event, is determined to be an eligible individual under this title, the same rules with respect to preexisting conditions as apply to a nonelecting TAA-eligible individual under section 605(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1165(b)) shall apply with respect to such individual, regardless of which type of qualified coverage the individual purchases.

(d) EXTENSION OF COBRA ELECTION PERIOD.—Notwithstanding any other provision of law, in the case of an individual who experiences a qualifying event (as defined in section 603 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1163) and who, not later than 6 months after such event, is determined to be an eligible individual under this title, the same rules with respect to the temporary extension of a COBRA election period as apply to a nonelecting TAA-eligible individual under section 605(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1165(b)) shall apply with respect to such individual.

(e) CURRENT EMPLOYER COVERAGE.—If an eligible individual uses the credits allowed under the Internal Revenue Code of 1986 and supplemental assistance to purchase coverage from an employer described in subsection (b), such credits and assistance shall apply as a percentage, not of the total premium amount for the eligible individual, but of the employee's or former employee's share of premium payments.

SEC. 215. PARTICIPATION BY SMALL EMPLOYERS.

(a) IN GENERAL.—Notwithstanding any other provision of this title, the Secretary shall establish procedures under which, during annual open enrollment periods, a small employer shall have the option of purchasing group coverage for employees and dependents of employees, including individuals who are not otherwise eligible individuals under this title, through a purchasing pool established under section 203(a).

(b) CONDITIONS OF PARTICIPATION.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the same requirements that apply with respect to participating insurers covering eligible low-income individuals under section 203 shall apply with respect to coverage offered by such insurers through a small employer.

(2) RISK ADJUSTMENT.—

(A) INCREASED PAYMENTS.—If employees of a small employer who are not otherwise eligible individuals under this title enroll in a private group health insurance plan under this title and have a collective risk level that exceeds the statewide average (as determined pursuant to risk adjustment mechanisms developed by the Secretary consistent with section 209(b)(1)), the Secretary (through a pool operator) shall provide participating insurers with such small employer enrollment bonus payments as are necessary to compensate the insurers for such increased risk. The premium charged to enrollees under this section shall be the same premium that is the basis of premium charges to enrollees who are eligible low-income individuals.

(B) REDUCED PAYMENTS.—A pool operator shall reduce payments to any plan with a risk level that falls below the statewide average (as so determined).

(3) ADMINISTRATIVE GUIDELINES.—The Secretary shall develop guidelines for pool operators to use in serving small employers, which shall be modeled after existing, successful, longstanding small business purchasing cooperatives, and shall include administratively simple methods for small employers and licensed insurance brokers to participate in the program established under this title.

(c) INFORMATION CAMPAIGN.—

(1) IN GENERAL.—The pool operator for a State shall establish and conduct, directly or through 1 or more public or private entities (which may include licensed insurance brokers), a health insurance information program to inform small employers about health coverage for employees.

(2) REQUIREMENTS.—The program established under paragraph (1) shall educate small employers with respect to matters that include (but are not limited to) the following:

(A) The benefits of providing health insurance to employees, including tax benefits to both the employer and employees, increased productivity, and decreased employee turnover.

(B) The rights of small employers under Federal and State health insurance reform laws.

(C) Options for purchasing coverage, including (but not limited to) through the State's purchasing pool operated pursuant to section 203.

(d) GRANTS TO HELP STATE-BASED POOLS PROMOTE SMALL BUSINESS COVERAGE.—

(1) IN GENERAL.—The Secretary may award grants to a pool operator for the following:

(A) The net costs of risk-adjusted payments under paragraph (b)(2), to the extent the sum of upward adjustments exceeds the sum of downward adjustments for the pool operator.

(B) The reasonable cost of the information campaign under subsection (c).

(C) The pool operator's reasonable administrative costs to implement this section.

(2) LIMITATION.—This section shall not apply to a State's pool unless sufficient grant funds have been received under this subsection to implement this section on a fiscally sound basis and such receipt is certified by the pool operator.

(3) APPLICATION.—A pool operator desiring a grant under this section shall submit an application to the Secretary in such manner, at such time, and containing such information as the Secretary may require.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for making grants under this section.

SEC. 216. REPORT.

Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report containing recommendations for such legislative and administrative changes as the Secretary determines are appropriate to permit affinity groups related for reasons other than a common employer to participate in purchasing pools established under section 203.

SEC. 217. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated, such sums as may be necessary to carry out this title for fiscal year 2006 and each fiscal year thereafter.

(b) RULE OF CONSTRUCTION.—Amounts appropriated in accordance with subsection (a) shall be in addition to other amounts appropriated directly under this title and nothing in subsection (a) shall be construed to relieve the Secretary of mandatory payment obligations required under this title.

TITLE III—NATIONAL ADVISORY COMMISSION ON EXPANDED ACCESS TO HEALTH CARE

SEC. 301. NATIONAL ADVISORY COMMISSION ON EXPANDED ACCESS TO HEALTH CARE.

(a) ESTABLISHMENT.—Not later than October 1, 2003, the Secretary of Health and Human Services (referred to in this section as the ''Secretary''), shall establish an entity to be known as the National Advisory Commission on Expanded Access to Health Care (referred to in this section as the ''Commission'').

(b) APPOINTMENT OF MEMBERS.—

(1) IN GENERAL.—Not later than 45 days after the date of enactment of this Act, the House and Senate Majority and Minority Leaders shall each appoint 4 members of the Commission and the Secretary shall appoint 1 member.

(2) CRITERIA.—Members of the Commission shall include representatives of the following:

(A) Consumers of health insurance.

(B) Health care professionals.

(C) State officials.

(D) Economists.

(E) Health care providers.

(F) Experts on health insurance.

(G) Experts on expanding health care to individuals who are uninsured.

(3) CHAIRPERSON.—At the first meeting of the Commission, the Commission shall select a Chairperson from among its members.

(c) MEETINGS.—

(1) IN GENERAL.—After the initial meeting of the Commission which shall be called by the Secretary, the Commission shall meet at the call of the Chairperson.

(2) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(3) SUPERMAJORITY VOTING REQUIREMENT.—To approve a report required under paragraph (2) or (3) of subsection (e), at least 60 percent of the membership of the Commission must vote in favor of such a report.

(d) DUTIES.—The Commission shall—

(1) assess the effectiveness of programs designed to expand health care coverage or make health care coverage affordable to the otherwise uninsured individuals through identifying the accomplishments and needed improvements of each program;

(2) make recommendations about benefits and cost-sharing to be included in health care coverage for various groups, taking into account—

(A) the special health care needs of children and individuals with disabilities;

(B) the different ability of various populations to pay out-of-pocket costs for services;

(C) incentives for efficiency and cost-control; and

(D) preventative care, disease management services, and other factors;

(3) recommend mechanisms to discourage individuals and employers from voluntarily opting out of health insurance coverage;

(4) recommend mechanisms to expand health care coverage to uninsured individuals with incomes above 200 percent of the official income poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved;

(5) recommend automatic enrollment and retention procedures and other measures to increase health care coverage among those eligible for assistance;

(6) review the roles, responsibilities, and relationship between Federal and State agencies with respect to health care coverage and recommend improvements; and

(7) analyze the size, effectiveness, and efficiency of current tax and other subsidies for health care coverage and recommend improvements.

(e) REPORTS.—

(1) ANNUAL REPORT.—The Commission shall submit annual reports to the President and Congress addressing the matters identified in subsection (d).

(2) BIENNIAL REPORT.—

(A) IN GENERAL.—The Commission shall submit biennial reports to the President and Congress, which shall contain—

(i) recommendations concerning essential benefits and maximum out-of-pocket cost-sharing (for the general population and for individuals with limited ability to pay, which shall not exceed the out-of-pocket cost-sharing permitted under section 2103(e) of the Social Security Act (42 U.S.C. 1397cc(e))) for the coverage options described in title II; and

(ii) proposed legislative language to implement such recommendations.

(B) CONGRESSIONAL ACTION.—The legislative language proposed under subparagraph (A)(ii) shall proceed to immediate consideration on the floor of the House of Representatives and the Senate and shall be approved or rejected, without amendment, using procedures employed for recommendations of military base closing commissions.

(3) COMMISSION REPORT.—No later than January 15, 2007, the Commission shall submit a report to the President and Congress, which shall include—

(A) recommendations on policies to provide health care coverage to uninsured individuals with incomes above 200 percent of the official income poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved;

(B) recommendations on changes to policies enacted under this Act; and

(C) proposed legislative language to implement such recommendations.

(f) ADMINISTRATION.—

(1) POWERS.—

(A) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this section.

(B) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this section. Upon request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission.

(C) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(D) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(2) COMPENSATION.—While serving on the business of the Commission (including travel time), a member of the Commission shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, and while so serving away from home and the member's regular place of business, a member may be allowed travel expenses, as authorized by the chairperson of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(3) STAFF.—

(A) IN GENERAL.—The Chairperson of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(B) STAFF COMPENSATION.—The Chairperson of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(C) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(D) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(g) TERMINATION.—Except with respect to activities in connection with the ongoing biennial report required under subsection (e)(2), the Commission shall terminate 90 days after the date on which the Commission submits the report required under subsection (e)(3).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this section for fiscal year 2004 and each fiscal year thereafter.

SEC. 302. CONGRESSIONAL ACTION.

(a) BILL INTRODUCTION.—

(1) IN GENERAL.—Any legislative language included in the report required under section 301(e)(3) may be introduced as a bill by request in the following manner:

(A) HOUSE OF REPRESENTATIVES.—In the House of Representatives, by the Majority Leader and the Minority Leader not later than 10 days after receipt of the legislative language.

(B) SENATE.—In the Senate, by the Majority Leader and the Minority Leader not later than 10 days after receipt of the legislative language.

(2) ALTERNATIVE BY ADMINISTRATION.—The President may submit legislative language based on the recommendations of the Commission and such legislative language may be introduced in the manner described in paragraph (1).

(b) COMMITTEE CONSIDERATION.—

(1) IN GENERAL.—Any legislative language submitted pursuant to paragraph (1) or (2) of subsection (a) (in this section referred to as ''implementing legislation'') shall be referred to the appropriate committees of the House of Representatives and the Senate.

(2) REPORTING.—

(A) COMMITTEE ACTION.—If, not later than 150 days after the date on which the implementing legislation is referred to a committee under paragraph (1), the committee has reported the implementing legislation or has reported an original bill whose subject is related to reforming the health care system, or to providing access to affordable health care coverage for Americans, the regular rules of the applicable House of Congress shall apply to such legislation.

(B) DISCHARGE FROM COMMITTEES.—

(i) SENATE.—

(I) IN GENERAL.—If the implementing legislation or an original bill described in subparagraph (A) has not been reported by a committee of the Senate within 180 days after the date on which such legislation was referred to committee under paragraph (1), it shall be in order for any Senator to move to discharge the committee from further consideration of such implementing legislation.

(II) SEQUENTIAL REFERRALS.—Should a sequential referral of the implementing legislation be made, the additional committee has 30 days for consideration of implementing legislation before the discharge motion described in subclause (I) would be in order.

(III) PROCEDURE.—The motion described in subclause (I) shall not be in order after the implementing legislation has been placed on the calendar. While the motion described in subclause (I) is pending, no other motions related to the motion described in subclause (I) shall be in order. Debate on a motion to discharge shall be limited to not more than 10 hours, equally divided and controlled by the Majority Leader and the Minority Leader, or their designees. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed or disagreed to.

(IV) EXCEPTION.—If implementing language is submitted on a date later than May 1 of the second session of a Congress, the committee shall have 90 days to consider the implementing legislation before a motion to discharge under this clause would be in order.

(ii) HOUSE OF REPRESENTATIVES.—If the implementing legislation or an original bill described in subparagraph (A) has not been reported out of a committee of the House of Representatives within 180 days after the date on which such legislation was referred to committee under paragraph (1), then on any day on which the call of the calendar for motions to discharge committees is in order, any member of the House of Representatives may move that the committee be discharged from consideration of the implementing legislation, and this motion shall be considered under the same terms and conditions, and if adopted the House of Representatives shall follow the procedure described in subsection (c)(1).

(c) FLOOR CONSIDERATION.—

(1) MOTION TO PROCEED.—If a motion to discharge made pursuant to subsection (b)(2)(B)(i) or (b)(2)(B)(ii) is adopted, then, not earlier than 5 legislative days after the date on which the motion to discharge is

adopted, a motion may be made to proceed to the bill.

(2) FAILURE OF MOTION.—If the motion to discharge made pursuant to subsection (b)(2)(B)(i) or (b)(2)(B)(ii) fails, such motion may be made not more than 2 additional times, but in no case more frequently than within 30 days of the previous motion. Debate on each of such motions shall be limited to 5 hours, equally divided.

(3) APPLICABLE RULES.—Once the Senate is debating the implementing legislation the regular rules of the Senate shall apply.

TITLE IV—STATE WAIVERS

SEC. 401. STATE WAIVERS.

(a) IN GENERAL.—Notwithstanding any other provision of law, a State may apply to the Secretary of Health and Human Services for waivers of such provisions of law as may be necessary for the State to implement policies that make comprehensive, affordable health coverage available for all State residents, including access to essential benefits with limits on cost-sharing, as provided in the most recent report under section 301(e)(2).

(b) REQUIREMENTS.—In order to ensure that waivers under this section benefit rather than harm health care consumers, a State shall not be eligible for a waiver under this section unless—

(1) the State reasonably expects to achieve a level of enrollment in coverage described in subsection (a) that is at least equal to the level of coverage (taking into account the number of insured individuals, covered benefits, and premium and out-of-pocket costs to the consumer for such coverage) that the State would have achieved if the State had fully implemented the coverage options available under titles I and II of this Act;

(2) no individual who would have qualified for assistance under the State medicaid program under title XIX of the Social Security Act or the State children's health insurance program under title XXI of such Act, as of either the date of the waiver request or the date of enactment of this Act, will be denied eligibility for such program, have a reduction in benefits under such program, have reduced access to geographically and linguistically appropriate care or essential community providers, or be subject to increased premiums or cost-sharing under the waiver program under this section; and

(3) the State agrees to comply with such standards or guidelines as the Secretary of Health and Human Services may require to ensure that the requirements of paragraphs (1) and (2) are satisfied.

(c) FEDERAL PAYMENTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall pay a State with a waiver approved under this section an amount each quarter equal to the sum of—

(A) the Federal payments the State and residents of the State (including, but not limited to, through the credit allowed under section 36 of the Internal Revenue Code of 1986 for health insurance costs) would have received if the State had exercised the coverage options under titles I and II of this Act with respect to residents of the State who have not attained age 65; and

(B) the amount of any grants authorized by this Act that the State would have received if the State had applied for such grants.

(2) ADDITIONAL PAYMENT FOR MEDICARE BENEFICIARIES UNDER AGE 65.—

(A) IN GENERAL.—In the case of a State that elects to enroll an individual described in subparagraph (B) in coverage described in subsection (a), the amount described in paragraph (1) with respect to a quarter shall be increased by the amount described in subparagraph (C).

(B) INDIVIDUAL DESCRIBED.—An individual is described in this subparagraph if the individual—

(i) has not attained age 65;

(ii) is eligible for coverage under title XVIII of the Social Security Act; and

(iii) voluntarily elects to enroll in coverage described in subsection (a).

(C) AMOUNT DESCRIBED.—The amount described in this subparagraph is the amount equal to the amount that the Federal Government would have incurred with respect to a quarter for providing coverage to an individual described in subparagraph (B) under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(d) IMPLEMENTATION DATE.—No State may submit a request for a waiver under this section before October 1, 2007.

By Mr. SARBANES (for himself, Mr. ALEXANDER, Mr. AKAKA, Mr. BAUCUS, Mr. CORZINE, Mr. DODD, Mr. GRAHAM of Florida, Mr. KENNEDY, Mr. LAUTENBERG, Mr. LEVIN, Mr. REID, Mr. SCHUMER, Ms. STABENOW, and Mr. WYDEN):

S. 1032. A bill to provide for alternative transportation in certain federally owned or managed areas that are open to the general public; to the Committee on Energy and Natural Resources.

Mr. SARBANES. Mr. President, I rise today to introduce legislation similar to measures I have introduced in previous Congresses that will help protect our Nation's natural resources and improve the visitor experience in our national parks and other public lands. The Transit in Parks Act, or ''TRIP,'' establishes a new Federal transit grant initiative to support the development of alternative transportation services for our national parks, wildlife refuges, Federal recreational areas, and other public lands. I am pleased to be joined by Senators AKAKA, ALEXANDER, BAUCUS, CORZINE, DODD, GRAHAM, KENNEDY, LAUTENBERG, LEVIN, REID, SCHUMER, STABENOW, and WYDEN, who are cosponsors of this legislation.

I want to underscore again today some of the principal arguments I have made in past years as to why this legislation is urgently needed. Memorial Day weekend, the opening of the summer travel season, is just weeks away. Millions of visitors will soon head to our national parks to enjoy the incredible natural heritage with which our Nation was endowed. But too many of them will spend hours looking for parking, or staring at the bumper of the car in front of them.

Clearly, the world has changed significantly since the national parks first opened in the second half of the nineteenth century, when visitors arrived by stagecoach along dirt roads. At that time, travel through parklands, such as Yosemite or Yellowstone, was long, difficult, and costly. Not many people could afford or endure such a trip. The introduction of the automobile gave every American greater mobility and freedom, which included the freedom to travel and see some of our Nation's great natural wonders. Early in this century, landscape architects from the National Park Service and highway engineers from the U.S. Bureau of Public Roads collaborated to produce many feats of road engineering that opened the national park lands to millions of Americans.

Yet greater mobility and easier access now threaten the very environments that the National Park Service is mandated to protect. The ongoing tension between preservation and access has always been a challenge for our national park system. Today, record numbers of visitors and cars have resulted in increasing damage to our parks. The Grand Canyon alone has almost five million visitors a year. As many as 6,000 vehicles arrive in a single summer day. They compete for 2,400 parking spaces. Between 32,000 and 35,000 tour buses go to the park each year. During the peak summer season, the entrance route becomes a giant parking lot.

In 1975, the total number of visitors to America's national parks was 190 million. By 2002, that number had risen to 277 million annual visitors—almost equal to one visit by every man, woman, and child in this country. This dramatic increase in visitation has created an overwhelming demand on these areas, resulting in severe traffic congestion, visitor restrictions, and in some instances vacationers being shut out of the parks altogether. The environmental damage at the Grand Canyon is visible at many other parks: Yosemite, which has more than four million visitors a year; Yellowstone, which has more than three million visitors a year and experiences such severe traffic congestion that access has to be restricted; Zion; Acadia; Bryce; and many others. We need to solve these problems now or risk permanent harm to our nation's natural, cultural, and historical heritage.

Visitor access to the parks is vital not only to the parks themselves, but to the economic health of their gateway communities. For example, visitors to Yosemite infuse $3 billion a year into the local economy of the surrounding area. At Yellowstone, tourists spend $725 million annually in adjacent communities. Wildlife-related tourism generates an estimated $60 billion a year nationwide. If the parks are forced to close their gates to visitors due to congestion, the economic vitality of the surrounding region would be jeopardized.

The challenge for park management has always been twofold: to conserve and protect the nation's natural, historical, and cultural resources, while at the same time ensuring visitor access and enjoyment of these sensitive environments. Until now, the principal transportation systems that the Federal Government has developed to provide access into our national parks are roads, primarily for private automobile access. The TRIP legislation recognizes that we need to do more than simply

build roads; we must invest in alternative transportation solutions before our national parks are damaged beyond repair.

In developing solutions to the parks' transportation needs, this legislation builds upon the 1997 Memorandum of Understanding between Secretary of Transportation Rodney Slater and Secretary of the Interior Bruce Babbitt, in which the two Departments agreed to work together to address transportation and resource management needs in and around national parks. The findings in the MOU are especially revealing: Congestion in and approaching many National Parks is causing lengthy traffic delays and backups that substantially detract from the visitor experience. Visitors find that many of the National Parks contain significant noise and air pollution, and traffic congestion similar to that found on the city streets they left behind.

In many National Park units, the capacity of parking facilities at interpretive or scenic areas is well below demand. As a result, visitors park along roadsides, damaging park resources and subjecting people to hazardous safety conditions as they walk near busy roads to access visitor use areas.

On occasion, National Park units must close their gates during high visitation periods and turn away the public because the existing infrastructure and transportation systems are at, or beyond, the capacity for which they were designed.

In addition, the TRIP legislation is designed to implement the recommendations from a comprehensive study of alternative transportation needs in public lands that I was able to include in the Transportation Equity Act for the 21st Century, TEA–21, as section 3039. The Federal Lands Alternative Transportation Systems Study confirmed what those of us who have visited our national parks already know: there is a significant and well-documented need for alternative transportation solutions in the national parks to prevent lasting damage to these incomparable natural treasures.

The study examined over two hundred sites, and identified needs for alternative transportation services at two-thirds of those sites. The study found that implementation of such services can help achieve a number of desirable outcomes: ''Relieve traffic congestion and parking shortages; enhance visitor mobility and accessibility; preserve sensitive natural, cultural, and historic resources; provide improved interpretation, education and visitor information services; reduce pollution; and improve economic development opportunities for gateway communities.''

In fact, the study concluded that ''the provision of transit in federally-managed lands can have national economic implications as well as significant economic benefits for local areas surrounding the sites.'' The study determined that funding transit needs would support thousands of jobs around the country, while also providing a direct benefit to the economy of gateway communities by ''expand[ing] the number of visits to the site and expand[ing] the amount of visitor spending in the surrounding communities.''

The study identified ''lack of a dedicated funding source for developing, implementing, and operating and maintaining transit systems'' as a key barrier to implementation of alternative transportation in and around federally-managed lands. The Transit in Parks Act will go far toward helping parks and their gateway communities overcome this barrier. This new Federal transit grant program will provide funding to the Federal land management agencies that manage the 388 various sites within the National Park System, the National Wildlife Refuges, Federal recreational areas, and other public lands, including National Forest System lands, and to their State and local partners.

The bill's objectives are to develop new and expanded transit services throughout the national parks and other public lands to conserve and protect fragile natural, cultural, and historical resources and wildlife habitats, to prevent or mitigate adverse impact on those resources and habitats, and to reduce pollution and congestion, while at the same time facilitating appropriate visitor access and improving the visitor experience. The program will provide capital funds for transit projects, including rail or clean fuel bus projects, joint development activities, pedestrian and bike paths, or park waterway access, within or adjacent to national parks and other public lands. The Secretary of Transportation may make funds available for operations as well. The bill authorizes $90 million for this new program for each of the fiscal years 2004 through 2009, consistent with the level of need identified in the study. It is anticipated that other resources—both public and private—will be available to augment these amounts.

The bill formalizes the cooperative arrangement in the 1997 MOU between the Secretary of Transportation and the Secretary of the Interior to exchange technical assistance and to develop procedures relating to the planning, selection and funding of transit projects in national park lands. The bill further provides funds for planning, research, and technical assistance that can supplement other financial resources available to the Federal land management agencies. The projects eligible for funding would be developed through the transportation planning process and prioritized for funding by the Secretary of the Interior in consultation and cooperation with the Secretary of Transportation. It is anticipated that the Secretary of the Interior would select projects that are diverse in location and size. While major national parks such as the Grand Canyon or Yellowstone are clearly appropriate candidates for significant transit projects under this section, there are numerous small urban and rural Federal park lands that can benefit enormously from small projects, such as bike paths or improved connections with an urban or regional public transit system. No single project will receive more than 12 percent of the total amount available in any given year. This ensures a diversity of projects selected for assistance.

In addition, I firmly believe that this program will create new opportunities for the Federal land management agencies to partner with local transit agencies in gateway communities adjacent to the parks, both through the TEA–21 planning process and in developing integrated transportation systems. This will spur new economic development within these communities, as they develop transportation centers for park visitors to connect to transit links into the national parks and other public lands.

The ongoing tension between preservation and access has always been a challenge for the National Park Service. Today, that challenge has new dimensions, with overcrowding, pollution, congestion, and resource degradation increasing at many of our national parks. This legislation—the Transit in Parks Act—will give our Federal land management agencies important new tools to improve both preservation and access. Just as we have found in metropolitan areas, transit is essential to moving large numbers of people in our national parks—quickly, efficiently, at low cost, and without adverse impact. At the same time, transit can enhance the economic development potential of our gateway communities.

As we begin a new millennium, I cannot think of a more worthy endeavor to help our environment and preserve our national parks, wildlife refuges, and Federal recreational areas than by encouraging alternative transportation in these areas. My bill is strongly supported by the National Parks Conservation Association, Environmental Defense, the American Public Transportation Association, Community Transportation Association, Amalgamated Transit Union, Surface Transportation Policy Project, Natural Resources Defense Council, Friends of the Earth, Rails-to-Trails Conservancy, America Bikes and others, and I ask unanimous consent that the bill, a section-by-section analysis, and letters of support be printed in the RECORD, along with the USA Today article, ''Save Parks: Park Cars.''

I believe that we have a clear choice before us: we can turn paradise into a parking lot—or we can invest in alternatives. I urge my colleagues to support the Transit in Parks Act to ensure that our Nation's natural treasures will be preserved for many generations to come.

By Mr. BINGAMAN (for himself, Mr. LUGAR, Mrs. LINCOLN, Mr.

CORZINE, Ms. LANDRIEU, Mr. BREAUX, Mr. KERRY, Ms. CANTWELL, Mrs. MURRAY, Mrs. CLINTON, and Mr. MILLER):

S. 1033. A bill to amend titles XIX and XXI of the Social Security Act to expand or add coverage of pregnant women under the medicaid and State children's health insurance program, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today to introduce bipartisan legislation with Senators LUGAR, LINCOLN, CORZINE, LANDRIEU, BREAUX, KERRY, MURRAY, CANTWELL, CLINTON, and MILLER. This legislation, entitled the ''Start Healthy, Stay Healthy Act of 2003,'' would significantly reduce the number of uninsured pregnant women and newborns by expanding coverage to pregnant women through Medicaid and the Children's Health Insurance Program, or CHIP, and to newborns through the first full year of life.

Sunday is Mothers' Day. Every year, we honor our Nation's mothers and we should take the time to assess how we can do better by them, including their health and well-being.

According to a recent report by Save the Children entitled ''The State of the World's Mothers,'' the United States fares no better than 11th in the world. Why is this? According to the report, ''The United States earned its 11th place rank this year based on several factors: One of the key indicators used to calculate the well-being for mothers is lifetime risk of maternal mortality . . . Canada, Australia, and all the Western and Northern European countries in the study performed better than the United States in this indicator.''

The study adds, ''Similarly, the United States did not do as well as the top 10 countries with regard to infant mortality rates.''

In fact, the United States ranks 21st in maternal mortality and 28th in infant mortality, the worst among developed nations. We should and must do better by our Nation's mothers and infants.

Throughout our Nation's history, there has been long-standing policy linking programs for pregnant women and infants, including Medicaid, WIC, and the Maternal and Child Health Block Grant. CHIP, unfortunately, fails to provide coverage to pregnant women beyond the age of 18. As a result, it is more likely that newborns eligible for CHIP are not covered from the moment of birth, and therefore, often miss having comprehensive prenatal care and those first critical months of life until their CHIP application is processed.

By expanding coverage to pregnant women through CHIP, the ''Start Healthy, Stay Healthy Act'' recognizes the importance of prenatal care to the health and development of a child. As Dr. Alan Waxman of the University of New Mexico School of Medicine has written, ''Prenatal care is an important factor in the prevention of birth defects and the prevention of prematurity, the most common causes of infant death and disability. Babies born to women with no prenatal care or late prenatal care are nearly twice as likely to [be] low birthweight or very low birthweight as infants born to women who received early prenatal care.''

Unfortunately, according to the Centers for Disease Control and Prevention, New Mexico ranked worst in the Nation in the percentage of mothers receiving late or no prenatal care last year. The result is often quite costly—both in terms of the health of the mother and newborn but also in terms of the long-term expenses since the result can be chronic, lifelong health problems.

In fact, according to the Agency for Healthcare Research and Quality, ''four of the top 10 most expensive conditions in the hospital are related to care of infants with complications (respiratory distress, prematurity, heart defects, and lack of oxygen).'' As a result, in addition to reduced infant mortality and morbidity, the provision to expand coverage to pregnant women can be cost effective.

The ''Start Healthy, Stay Healthy Act'' also eliminates the unintended federal policy through CHIP that covers pregnant women only through the age of 18 and cuts off that coverage once the women turn 19 years of age. Certainly, everybody can agree that the government should not be telling women that they are more likely to receive prenatal care coverage only if they become pregnant as a teenager.

This bipartisan legislation has previously received or has added endorsements from the following organizations: the March of Dimes, The American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, the What to Expect Foundation, the American Academy of Family Physicians, the American Academy of Pediatric Dentistry, the American Academy of Child and Adolescent Psychiatry, the National Association of Community Health Centers, the American Hospital Association, the National Association of Children's Hospitals, the Federation of American Health Systems, the National Association of Public Hospitals and Health Systems, Premier, Catholic Health Association, Catholic Charities USA, Family Voices, the Association of Maternal and Child Health Programs, the National Health Law Program, the National Association of Social Workers, Every Child By Two, the United Cerebral Palsy Associations, the Society for Maternal-Fetal Medicine, and Families USA.

This legislation is a reintroduction of a bill that was introduced in 2001. Throughout that year, the Administration made numerous statements in support of the passage of this type of legislation, but unfortunately, reversed course in October 2002 after publishing a regulation allowing states to redefine a ''child'' as an ''unborn child'' and to provide prenatal care through CHIP in that manner. In a letter to Senator NICKLES dated October 8, 2002, Secretary Thompson argued, ''I believe the regulation is a more effective and comprehensive solution to this issue.''

While a number of senators strongly disagreed with Secretary Thompson's assertion and sent him letters to that effect on October 10, 2002, and on October 23, 2002, we felt it was important to get the testimony of our Nation's medical experts on the health and well-being of both pregnant women and newborns. We called for a hearing in the Senate Health, Education, Labor and Pensions Committee on October 24, 2002. Witnesses included representatives from the March of Dimes, the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, and the What to Expect Foundation. They were asked to compare the regulation to the legislation and I will let their testimony speak for itself.

Dr. Nancy Green testified on behalf of the March of Dimes Birth Defects Foundation. She said:

> We support giving states the flexibility they need to cover income-eligible pregnant women age 19 and older, and to automatically enroll infants born to SCHIP-eligible mothers. By establishing a uniform eligibility threshold for coverage for pregnant women and infants, states will be able to improve maternal health, eliminate waiting periods for infants and streamline administration of publicly supported health programs. Currently, according to the Department of Health and Human Services' Centers for Medicare and Medicaid Services and the National Governors' Association, 36 states and the District of Columbia have income eligibility thresholds that are more restrictive for women than for their newborns. Encouraging states to eliminate this disparity by allowing them to establish a uniform eligibility threshold for pregnant women and their infants should be a national policy priority.

Dr. Green adds:

> Specifically, we are deeply concerned that final regulation fails to provide to the mother the standard scope of maternity care services recommended by the American College of Obstetricians and Gynecologists (ACOG) and the American Academy of Pediatrics (AAP). Of particular concern, the regulation explicitly states that postpartum care is not covered and, therefore, federal reimbursement will not be available for these services. In addition, because of the contentious collateral issues raised by this regulation groups like the March of Dimes will find it even more difficult to work in the states to generate support for legislation to extend coverage to uninsured pregnant women.

Dr. Laura Riley testified on behalf of ACOG. In her testimony, she stated:

> ACOG is very concerned that mothers will not have access to postpartum services under the regulation. The rule clearly states that ''. . . care after delivery, such as postpartum services could not be covered as part of the Title XXI State Plan . . . because they are not services for an eligible child.''

On the importance of postpartum care, Dr. Riley adds:

When new mothers develop postpartum complications, quick access to their physicians is absolutely critical. Postpartum care is especially important for women who have preexisting medical conditions, and for those whose medical conditions were induced by their pregnancies, such as gestational diabetes or hypertension, and for whom it is necessary to ensure that their conditions are stabilized and treated.

As a result, Dr. Riley concludes:

Limiting coverage to the fetus instead of the mother omits a critical component of postpartum care that physicians regard as essential for the health of the mother and the child. Covering the fetus as opposed to the mother also raises questions of whether certain services will be available during pregnancy and labor if the condition is one that more directly affects the woman. The best way to address this coverage issue is to pass S. 724, supported by Senators Bond, Bingaman and Lincoln and many others, and which provides a full range of medical services during and after pregnancy directly to the pregnant woman.

Dr. Richard Bucciarelli testified on behalf of the American Academy of Pediatrics. He said:

Recently, the Administration published a final rule expanding SCHIP cover unborn children. The Academy is concerned that, as written, this regulation falls dangerously short of the clinical standards of care outlined in our guidelines, which describe the importance of covering all stages of a birth—pregnancy, delivery, and postpartum care.

It is important to note that the regulation subtracts the time that an ''unborn child'' is covered from the period of continuously eligibility after birth. Consequently, children would be denied insurance coverage at very critical points during the first full year of life. As such, Dr. Bucciarelli expressed support for the legislation over the regulation because it, in his words:

. . . takes an important step to decrease the number of uninsured children by providing 12 months of continuous eligibility for those children born. . . . This legislation ensures that children born to women enrolled in Medicaid or SCHIP are immediately enrolled in the program for which they are eligible. Additionally, this provision prevents newborns eligible for SCHIP from being subject to enrollment waiting periods, ensuring that infants receive appropriate health care in their first year of life.

And finally, Lisa Bernstein testified as Executive Director of The What to Expect Foundation, which takes its name from the bestselling What to Expect pregnancy and parenting series that has helped over 20 million families from pregnancy through their child's toddler years. Ms. Bernstein also supported the legislation as a far superior option over the regulation and make this simple but eloquent point:

. . . only a healthy parent can provide a healthy future for a healthy child.

The testimony of these experts speak for themselves and I urge my colleagues to pass this legislation as soon as possible.

I ask unanimous consent that the text of the bill and a series of letters be printed in the RECORD.

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

S. 1033

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 ''Start Healthy, Stay Healthy Act of 2003''.

SEC. 2. STATE OPTION TO EXPAND OR ADD COVERAGE OF CERTAIN PREGNANT WOMEN UNDER MEDICAID AND SCHIP.

(a) MEDICAID.—

(1) AUTHORITY TO EXPAND COVERAGE.—Section 1902(l)(2)(A)(i) of the Social Security Act (42 U.S.C. 1396a(l)(2)(A)(i)) is amended by inserting ''(or such higher percent as the State may elect for purposes of expenditures for medical assistance for pregnant women described in section 1905(u)(4)(A))'' after ''185 percent''.

(2) ENHANCED MATCHING FUNDS AVAILABLE IF CERTAIN CONDITIONS MET.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(A) in the fourth sentence of subsection (b), by striking ''or subsection (u)(3)'' and inserting '', (u)(3), or (u)(4)''; and

(B) in subsection (u)—

(i) by redesignating paragraph (4) as paragraph (5); and

(ii) by inserting after paragraph (3) the following:

''(4) For purposes of the fourth sentence of subsection (b) and section 2105(a), the expenditures described in this paragraph are the following:

''(A) CERTAIN PREGNANT WOMEN.—If the conditions described in subparagraph (B) are met, expenditures for medical assistance for pregnant women described in subsection (n) or under section 1902(l)(1)(A) in a family the income of which exceeds the effective income level (expressed as a percent of the poverty line and considering applicable income disregards) that has been specified under subsection (a)(10)(A)(i)(III) or (l)(2)(A) of section 1902, as of January 1, 2003, but does not exceed the income eligibility level established under title XXI for a targeted low-income child.

''(B) CONDITIONS.—The conditions described in this subparagraph are the following:

''(i) The State plans under this title and title XXI do not provide coverage for pregnant women described in subparagraph (A) with higher family income without covering such pregnant women with a lower family income.

''(ii) The State does not apply an effective income level for pregnant women that is lower than the effective income level (expressed as a percent of the poverty line and considering applicable income disregards) that has been specified under the State plan under subsection (a)(10)(A)(i)(III) or (l)(2)(A) of section 1902, as of January 1, 2003, to be eligible for medical assistance as a pregnant woman.

''(C) DEFINITION OF POVERTY LINE.—In this subsection, the term 'poverty line' has the meaning given such term in section 2110(c)(5).''.

(3) PAYMENT FROM TITLE XXI ALLOTMENT FOR MEDICAID EXPANSION COSTS; ELIMINATION OF COUNTING MEDICAID CHILD PRESUMPTIVE ELIGIBILITY COSTS AGAINST TITLE XXI ALLOTMENT.—Section 2105(a)(1) of the Social Security Act (42 U.S.C. 1397ee(a)(1)) is amended—

(A) in the matter preceding subparagraph (A), by striking ''(or, in the case of expenditures described in subparagraph (B), the Federal medical assistance percentage (as defined in the first sentence of section 1905(b)))''; and

(B) by striking subparagraph (B) and inserting the following:

''(B) for the provision of medical assistance that is attributable to expenditures described in section 1905(u)(4)(A);''.

(4) ADDITIONAL AMENDMENTS TO MEDICAID.—

(A) ELIGIBILITY OF A NEWBORN.—Section 1902(e)(4) of the Social Security Act (42 U.S.C. 1396a(e)(4)) is amended in the first sentence by striking ''so long as the child is a member of the woman's household and the woman remains (or would remain if pregnant) eligible for such assistance''.

(B) APPLICATION OF QUALIFIED ENTITIES TO PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN UNDER MEDICAID.—Section 1920(b) of the Social Security Act (42 U.S.C. 1396r–1(b)) is amended by adding at the end after and below paragraph (2) the following flush sentence:

''The term 'qualified provider' includes a qualified entity as defined in section 1920A(b)(3).''.

(b) SCHIP.—

(1) COVERAGE.—Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) is amended by adding at the end the following:

''SEC. 2111. OPTIONAL COVERAGE OF TARGETED LOW-INCOME PREGNANT WOMEN.

''(a) OPTIONAL COVERAGE.—Notwithstanding any other provision of this title, a State may provide for coverage, through an amendment to its State child health plan under section 2102, of pregnancy-related assistance for targeted low-income pregnant women in accordance with this section, but only if the State meets the conditions described in section 1905(u)(4)(B).

''(b) DEFINITIONS.—For purposes of this title:

''(1) PREGNANCY-RELATED ASSISTANCE.—The term 'pregnancy-related assistance' has the meaning given the term child health assistance in section 2110(a) as if any reference to targeted low-income children were a reference to targeted low-income pregnant women, except that the assistance shall be limited to services related to pregnancy (which include prenatal, delivery, and postpartum services and services described in section 1905(a)(4)(C)) and to other conditions that may complicate pregnancy.

''(2) TARGETED LOW-INCOME PREGNANT WOMAN.—The term 'targeted low-income pregnant woman' means a woman—

''(A) during pregnancy and through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends;

''(B) whose family income exceeds the effective income level (expressed as a percent of the poverty line and considering applicable income disregards) that has been specified under subsection (a)(10)(A)(i)(III) or (l)(2)(A) of section 1902, as of January 1, 2003, to be eligible for medical assistance as a pregnant woman under title XIX but does not exceed the income eligibility level established under the State child health plan under this title for a targeted low-income child; and

''(C) who satisfies the requirements of paragraphs (1)(A), (1)(C), (2), and (3) of section 2110(b).

''(c) REFERENCES TO TERMS AND SPECIAL RULES.—In the case of, and with respect to, a State providing for coverage of pregnancy-related assistance to targeted low-income pregnant women under subsection (a), the following special rules apply:

''(1) Any reference in this title (other than in subsection (b)) to a targeted low-income child is deemed to include a reference to a targeted low-income pregnant woman.

''(2) Any such reference to child health assistance with respect to such women is deemed a reference to pregnancy-related assistance.

''(3) Any such reference to a child is deemed a reference to a woman during pregnancy and the period described in subsection (b)(2)(A).

''(4) In applying section 2102(b)(3)(B), any reference to children found through screening to be eligible for medical assistance under the State medicaid plan under title XIX is deemed a reference to pregnant women.

''(5) There shall be no exclusion of benefits for services described in subsection (b)(1) based on any preexisting condition and no waiting period (including any waiting period imposed to carry out section 2102(b)(3)(C)) shall apply.

''(6) Subsection (a) of section 2103 (relating to required scope of health insurance coverage) shall not apply insofar as a State limits coverage to services described in subsection (b)(1) and the reference to such section in section 2105(a)(1)(C) is deemed not to require, in such case, compliance with the requirements of section 2103(a).

''(7) In applying section 2103(e)(3)(B) in the case of a pregnant woman provided coverage under this section, the limitation on total annual aggregate cost-sharing shall be applied to the entire family of such pregnant woman.

''(d) AUTOMATIC ENROLLMENT FOR CHILDREN BORN TO WOMEN RECEIVING PREGNANCY-RELATED ASSISTANCE.—If a child is born to a targeted low-income pregnant woman who was receiving pregnancy-related assistance under this section on the date of the child's birth, the child shall be deemed to have applied for child health assistance under the State child health plan and to have been found eligible for such assistance under such plan or to have applied for medical assistance under title XIX and to have been found eligible for such assistance under such title, as appropriate, on the date of such birth and to remain eligible for such assistance until the child attains 1 year of age. During the period in which a child is deemed under the preceding sentence to be eligible for child health or medical assistance, the child health or medical assistance eligibility identification number of the mother shall also serve as the identification number of the child, and all claims shall be submitted and paid under such number (unless the State issues a separate identification number for the child before such period expires).''.

(2) ADDITIONAL ALLOTMENTS FOR PROVIDING COVERAGE OF PREGNANT WOMEN.—

(A) IN GENERAL.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended by inserting after subsection (c) the following:

''(d) ADDITIONAL ALLOTMENTS FOR PROVIDING COVERAGE OF PREGNANT WOMEN.—

''(1) APPROPRIATION; TOTAL ALLOTMENT.—For the purpose of providing additional allotments to States under this title, there is appropriated, out of any money in the Treasury not otherwise appropriated, for each of fiscal years 2004 through 2007, $200,000,000.

''(2) STATE AND TERRITORIAL ALLOTMENTS.—In addition to the allotments provided under subsections (b) and (c), subject to paragraphs (3) and (4), of the amount available for the additional allotments under paragraph (1) for a fiscal year, the Secretary shall allot to each State with a State child health plan approved under this title—

''(A) in the case of such a State other than a commonwealth or territory described in subparagraph (B), the same proportion as the proportion of the State's allotment under subsection (b) (determined without regard to subsection (f)) to the total amount of the allotments under subsection (b) for such States eligible for an allotment under this paragraph for such fiscal year; and

''(B) in the case of a commonwealth or territory described in subsection (c)(3), the same proportion as the proportion of the commonwealth's or territory's allotment under subsection (c) (determined without regard to subsection (f)) to the total amount of the allotments under subsection (c) for commonwealths and territories eligible for an allotment under this paragraph for such fiscal year.

''(3) USE OF ADDITIONAL ALLOTMENT.—Additional allotments provided under this subsection are not available for amounts expended before October 1, 2003. Such amounts are available for amounts expended on or after such date for child health assistance for targeted low-income children, as well as for pregnancy-related assistance for targeted low-income pregnant women.

''(4) NO PAYMENTS UNLESS ELECTION TO EXPAND COVERAGE OF PREGNANT WOMEN.—No payments may be made to a State under this title from an allotment provided under this subsection unless the State provides pregnancy-related assistance for targeted low-income pregnant women under this title, or provides medical assistance for pregnant women under title XIX, whose family income exceeds the effective income level applicable under subsection (a)(10)(A)(i)(III) or (l)(2)(A) of section 1902 to a family of the size involved as of January 1, 2003.''.

(B) CONFORMING AMENDMENTS.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended—

(i) in subsection (a), in the matter preceding paragraph (1), by inserting ''subject to subsection (d),'' after ''under this section,'';

(ii) in subsection (b)(1), by inserting ''and subsection (d)'' after ''Subject to paragraph (4)''; and

(iii) in subsection (c)(1), by inserting ''subject to subsection (d),'' after ''for a fiscal year,''.

(3) PRESUMPTIVE ELIGIBILITY UNDER TITLE XXI.—

(A) APPLICATION TO PREGNANT WOMEN.—Section 2107(e)(1)(D) of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is amended to read as follows:

''(D) Sections 1920 and 1920A (relating to presumptive eligibility).''.

(B) EXCEPTION FROM LIMITATION ON ADMINISTRATIVE EXPENSES.—Section 2105(c)(2) of the Social Security Act (42 U.S.C. 1397ee(c)(2)) is amended by adding at the end the following new subparagraph:

''(C) EXCEPTION FOR PRESUMPTIVE ELIGIBILITY EXPENDITURES.—The limitation under subparagraph (A) on expenditures shall not apply to expenditures attributable to the application of section 1920 or 1920A (pursuant to section 2107(e)(1)(D)), regardless of whether the child or pregnant woman is determined to be ineligible for the program under this title or title XIX.''.

(4) ADDITIONAL AMENDMENTS TO TITLE XXI.—

(A) NO COST-SHARING FOR PREGNANCY-RELATED SERVICES.—Section 2103(e)(2) of the Social Security Act (42 U.S.C. 1397cc(e)(2)) is amended—

(i) in the heading, by inserting ''OR PREGNANCY-RELATED SERVICES'' after ''PREVENTIVE SERVICES''; and

(ii) by inserting before the period at the end the following: ''or for pregnancy-related services''.

(B) NO WAITING PERIOD.—Section 2102(b)(1)(B) of the Social Security Act (42 U.S.C. 1397bb(b)(1)(B)) is amended—

(i) by striking '', and'' at the end of clause (i) and inserting a semicolon;

(ii) by striking the period at the end of clause (ii) and inserting ''; and''; and

(iii) by adding at the end the following:

''(iii) may not apply a waiting period (including a waiting period to carry out paragraph (3)(C)) in the case of a targeted low-income pregnant woman.''.

(c) EFFECTIVE DATE.—The amendments made by this section apply to items and services furnished on or after October 1, 2003, without regard to whether regulations implementing such amendments have been promulgated.

SEC. 3. COORDINATION WITH THE MATERNAL AND CHILD HEALTH PROGRAM.

(a) IN GENERAL.—Section 2102(b)(3) of the Social Security Act (42 U.S.C. 1397bb(b)(3)) is amended—

(1) in subparagraph (D), by striking ''and'' at the end;

(2) in subparagraph (E), by striking the period and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(F) that operations and activities under this title are developed and implemented in consultation and coordination with the program operated by the State under title V in areas including outreach and enrollment, benefits and services, service delivery standards, public health and social service agency relationships, and quality assurance and data reporting.''.

(b) CONFORMING MEDICAID AMENDMENT.—Section 1902(a)(11) of such Act (42 U.S.C. 1396a(a)(11)) is amended—

(1) by striking ''and'' before ''(C)''; and

(2) by inserting before the semicolon at the end the following: '', and (D) provide that operations and activities under this title are developed and implemented in consultation and coordination with the program operated by the State under title V in areas including outreach and enrollment, benefits and services, service delivery standards, public health and social service agency relationships, and quality assurance and data reporting''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on January 1, 2004.

SEC. 4. INCREASE IN SCHIP INCOME ELIGIBILITY.

(a) DEFINITION OF LOW-INCOME CHILD.—Section 2110(c)(4) of the Social Security Act (42 U.S.C. 42 U.S.C. 1397jj(c)(4)) is amended by striking ''200'' and inserting ''250''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to child health assistance provided, and allotments determined under section 2104 of the Social Security Act (42 U.S.C. 1397dd), for fiscal years beginning with fiscal year 2004.

SEC. 5. REVIEW OF STATE AGENCY BLINDNESS AND DISABILITY DETERMINATIONS.

Section 1633 of the Social Security Act (42 U.S.C. 1383b) is amended by adding at the end the following:

''(e)(1) The Commissioner of Social Security shall review determinations, made by State agencies pursuant to subsection (a) in connection with applications for benefits under this title on the basis of blindness or disability, that individuals who have attained 18 years of age are blind or disabled as of a specified onset date. The Commissioner of Social Security shall review such a determination before any action is taken to implement the determination.

''(2)(A) In carrying out paragraph (1), the Commissioner of Social Security shall review—

''(i) at least 25 percent of all determinations referred to in paragraph (1) that are made in fiscal year 2004; and

''(ii) at least 50 percent of all such determinations that are made in fiscal year 2005 or thereafter.

''(B) In carrying out subparagraph (A), the Commissioner of Social Security shall, to the extent feasible, select for review the determinations which the Commissioner of Social Security identifies as being the most likely to be incorrect.''.

THE SECRETARY OF HEALTH
AND HUMAN SERVICES,
Washington, DC, April 12, 2002.

Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR BINGAMAN: Thank you for sharing your views on our new proposal to expand health care coverage for low-income pregnant women under the State Children's Health Insurance Program (SCHIP). I believe it is not only appropriate, but indeed, medically necessary that our approach to child health care include the prenatal stage.

Prenatal care for women and their babies is a crucial part of medical care. These services can be a vital, life-long determinant of health, and we should do everything we can to make this care available for all pregnant women. It is one of the most important investments we can make for the long-term good health of our nation.

Our regulation would enable states to make use of funding already available under SCHIP to provide prenatal care for more low-income pregnant women and their babies. The proposed regulation, published in the FEDERAL REGISTER March 5, would clarify the definition of ''child'' under the SCHIP program. At present, SCHIP allows states to provide health care coverage to targeted low-income children under age 19. States may further limit their coverage to age groups within that range. The new regulation would clarify that states may include coverage for children from conception to age 19, enabling SCHIP coverage to include prenatal and delivery care to ensure the birth of healthy infants.

Although Medicaid currently provides coverage for prenatal care for some women with low incomes, implementing this new regulation will allow states to offer such coverage to additional women. States would not be required to go through the section 1115 waiver process to expand coverage for prenatal care.

By explicitly recognizing in our SCHIP regulations the health needs of children before birth, we can help states provide vital prenatal health care. I believe our approach is entirely appropriate to serve these health purposes. It has been an option for states in their Medicaid programs in the past and it should be made an option for states in their SCHIP program now. As I testified recently at a hearing held by the Health Subcommittee of the House Energy and Commerce Committee, I also support legislation to expand SCHIP to cover pregnant women. However, because legislation has not moved and because of the importance of prenatal care, I felt it was important to take this action.

I know we share the same commitment to achieving the goal of expanding health insurance coverage in order to reduce the number of uninsured.

A similar letter is being sent to the cosigners of your letter. Please feel free to call me if you have any questions or concerns.

Sincerely,

TOMMY G. THOMPSON.

THE SECRETARY OF HEALTH
AND HUMAN SERVICES,
Washington, DC, October 8, 2002.

Hon. DON NICKLES,
Assistant Republican Leader,
Washington, DC.

DEAR SENATOR NICKLES: Thank you for contacting me about the Department of Health and Human Services' final regulation to expand pre-natal and pregnancy related services to unborn children under the State Children's Health Insurance Program (SCHIP).

The final rule allows states the option to extend such services under SCHIP to low-income pregnant women and their unborn children immediately. The rule also enables states to cover a broader population of low-income women and children because it extends coverage to unborn children regardless of their mothers' immigrant status.

In your letter, you ask if ''this regulation has obviated the need for additional legislation, and has addressed this issue in a more timely and effective manner.'' As I have stated many times this year, my overarching goal has been to extend prenatal and pregnancy related services to low-income women and their children as quickly as possible so that those mothers are cared for during their pregnancy and their children are born healthy and strong. The law provided me the flexibility to do that and I believe the rule that was published this week achieves this universally desired goal. The proposed legislation, which has been pending in Congress for some time, would amend the SCHIP law so as to duplicate what we have already established as administration policy. I believe the regulation is a more effective and comprehensive solution to this issue. Therefore, there is no need for the Senate to pursue this legislation now.

Thank you for inquiring on this important policy matter.

Sincerely,

TOMMY G. THOMPSON.

U.S. SENATE,
Washington, DC, October 10, 2002.

Hon. TOMMY THOMPSON,
Secretary, Department of Health and Human Services, Washington, DC.

DEAR SECRETARY THOMPSON: Over the course of the past year, you have issued press releases, written letters, and responded to direct questions in both Senate and House hearings in support of passing legislation to provide health care coverage to pregnant women through the State Children's Health Insurance Program (SCHIP). You have repeatedly stated that you were proceeding with the regulation to expand SCHIP to ''unborn children'' only because legislation to expand coverage to pregnant women had not passed.

Your own regulation explicitly makes that very point and acknowledges that ''gaps remain'' and that a number of important health services for pregnant women, including postpartum care, are not provided for in the regulation. And yet, we now read in a letter from you to Senator Nickles dated October 8, 2002, that the ''gaps'' have somehow disappeared. As you write, ''The proposed legislation, which has been pending in Congress for some time, would amend the SCHIP law so as to duplicate what we have already established as administration policy. I believe the regulation is a more effective and comprehensive solution to this issue. Therefore, there is no need for the Senate to pursue this legislation now.''

Yet, your own regulation contradicts that statement and notes that ''there are still gaps'' and repeatedly points out those coverage gaps for pregnant women and children. With respect to care for women, under the regulation, it is explicitly stated that ''there must be a connection between the benefits provided and the health of the unborn child.'' A whole range of health services to pregnant women during pregnancy and delivery could be potentially denied as a result. In the case of epidurals, for example, the best the regulation can say is that you ''expect'' coverage.

For postpartum care, the regulation explicitly states that any care during that period, including but not limited to hemorrhage, infection, episiotomy repair, C-section repair, family planning counseling, treatment of complications after delivery (including life-saving surgery), and postpartum depression, would be denied. As the regulation reads, ''Commenters are correct that care after delivery, such as postpartum services could not be covered as part of [SCHIP], (unless the mother is under age 19 and eligible for SCHIP in her own right), because they are not services for an eligible child.''

According to the Centers for Disease Control and Prevention (CDC), the United States ranks 21st in the world in maternal mortality. The major causes of which were hemorrhage, ectopic pregnancy, pregnancy-induced hypertension, embolism, infection, and other complications of pregnancy and childbirth. Again, health coverage for many of these conditions is denied under the regulation but not in S. 724. How then do you argue the regulation is ''more effective and comprehensive'' and that the legislation is ''duplicat[ive]'' of the regulation with respect to care for pregnant women?

With respect to coverage of children, under the regulation, the 12-month continuous eligibility for children is not from the time of birth but the clock begins running during the time of coverage prior to birth. S. 724 provides comprehensive pediatric care to children throughout the first and most fragile year of life. In contrast, for prenatal care delivered to an ''unborn child'' under this regulation, that time is subtracted from the 12-month period after birth. Therefore, under the regulation, if nine months of prenatal care are provided, the child could lose coverage at the end of the 3rd month after birth. Potentially lost would be a number of important well-baby visits, immunizations, and access to their pediatric caregiver. Once again, how then do you argue the regulation is ''more effective and comprehensive'' and that the legislation is ''duplicat[ative]'' to the regulation for children?

Furthermore, according to the rule, the Administration estimates that only 13 states will elect to adopt this definition to include ''unborn children'' in their SCHIP state plans. The other 37 states will either not expand SCHIP to provide prenatal care to additional populations or be forced to seek a federal waiver to also cover pregnant women, as Colorado did just two weeks ago. However, the regulation was right on the mark in stating that it is ''an inferior option'' to require states to have to get waivers to provide the full range of care to pregnant women and 12-month continuous eligibility for children after birth.

As the regulation reads, ''. . . the Secretary's ability to intervene through one mechanism (a waiver) should not be the sole option for States and may in fact be an inferior option. Waivers are discretionary on the part of the Secretary and time limited while State plan amendments are permanent, and are subject to budget neutrality.'' For a third time, how can you now argue, less than a week after issuing the regulation, that it is ''more effective and comprehensive'' than the legislation?

The States agree, as you know. The National Governors' Association has clear policy expressing support for the passage of such legislation. As their policy position (HR–15. ''The State Children's Health Insurance Program (S–CHIP) Policy'') reads:

''The Governors have a long tradition of expanding coverage options for pregnant women through the Medicaid program. However, pregnant women in working families are not eligible for SCHIP coverage. The Governors call on Congress to create a state option that would allow states to provide health coverage to income-eligible pregnant women under SCHIP. This small shift in federal policy would allow states to provide critical prenatal care and would increase the likelihood that children born to SCHIP mothers would have a healthy start.''

Finally, unlike S. 724, the regulation provides absolutely no additional resources (despite estimating the cost to be $330 million over the next five years) for covering ''unborn children'' and certain pregnancy-related services. Current projections by the Office of Management and Budget indicate that SCHIP funds will ultimately be inadequate to cover all the children currently enrolled, even though millions of additional children are eligible but not currently covered. In sharp contrast, just as S. 724 does, we must provide adequate resources to serve both low-income children and low-income pregnant women.

Mr. Secretary, just as you said in your press release on January 31, 2002, we also praise Senators Bond, Breaux, and Collins for ''bipartisan leadership in supporting S. 724, a bill that would allow states to provide prenatal coverage for low-income women through the SCHIP program. We support this legislative effort in this Congress.'' We agreed with you on January 31, 2002, and hope that you will once again support the passage of S. 724, the ''Mothers and Newborns Health Insurance Act.''

We eagerly await your response to this very important matter with respect to the health and well-being of our nation's children and mothers.

Sincerely,

Jeff Bingaman, Jon Corzine, Edward M. Kennedy, Maria Cantwell, Hillary Rodham Clinton, Dianne Feinstein, Blanche L. Lincoln, Mary Landrieu, Patty Murray, James M. Jeffords, John B. Breaux, Jack Reed, Patrick J. Leahy, Barbara A. Mikulski, Charles E. Schumer.

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC, October 15, 2002.

Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR BINGAMAN: Thank you for your letter of last week and your continued interest in finding effective ways to increase prenatal coverage.

I have frequently stated in the past that my chief objective in proposing the rule to extend coverage to unborn children was to ensure that pregnant women and children who are currently ineligible for health care under either Medicaid or S–CHIP are given the support they need for a healthy pregnancy and a safe delivery. This is clearly a goal we share. When asked my position on pending legislation earlier this year, I expressed general support because my overriding interest and concern has always been to provide prenatal care to more women and children. If legislation could provide that coverage more expeditiously, then it seemed to me it would be advantageous to women and children to see that go forward.

However, despite years of committed effort by you and other members, Congress has yet to move legislation through the process. Legislation was introduced in the 106th Congress but was never reported out of Committee in either the House or Senate. In this current Congress, the Senate Finance Committee reported S. 724 in early August of this year, but no floor time was scheduled for its consideration. Consequently, after seven months without any legislative action, I issued a final regulation.

Last year, when I saw that I had the authority under current law to provide prenatal and delivery care to low-income pregnant mothers and their unborn children, I was excited because I realized the Department could accomplish what we all wish to achieve: helping those children get a healthy start in life. A great deal of thought went into the regulation and, with the exception of postpartum care after hospitalization, we were able to give the states the same flexibility the would have under the proposed legislation to provide prenatal and delivery care to unborn children and their mothers.

Under current law, however, we have the authority to grant waivers that include coverage for women if they become pregnant, including postpartum care. Since January 2001, I have granted approval to a number of states to allow for expanded health insurance coverage through comprehensive 1115 waivers, which also include postpartum care. In fact, this summer I approved a waiver for New Mexico which included prenatal care, labor and delivery, and postpartum care. This regulation simply adds to the options available to the states in expanding health insurance coverage.

In addition to making it possible for states to use federal funds to provide the prenatal and pregnancy-related coverage options available under S. 724, the regulation provides additional opportunities and assistance for states to reach low-income women. For example, under the regulation, we were able to reach an even broader population of vulnerable women and children because we could offer prenatal care to the children of immigrants who are otherwise ineligible for any coverage. The establishment of eligibility regardless of immigrant status is possible under the regulation but not under S. 724, making the regulation more comprehensive. I am sure you appreciate the importance of the new opportunity to provide prenatal care and pregnancy-related services to immigrant mothers, given the substantial immigrant population in New Mexico.

Additionally, the regulation provides more opportunities for states to access enhanced-match funds than S. 724. Under the bill, states with current eligibility levels for pregnant women below 185 percent of poverty would not be eligible for the enhanced match until they raised their eligibility at their regular match rate. States have already had the option to raise eligibility for pregnant women at their regular match rate, but many have not done so. Thus, we expect that many states will not expand prenatal coverage under S. 724. However, access to enhanced-match funds under the regulation will provide them a more affordable opportunity to do so.

With regard to specific criticisms of the rule, you have raised concerns about the reference in the S–CHIP regulation to ''gaps.'' It is important to put the use of the term ''gaps'' in the proper context. This reference is to the eleigbility gap between Medicaid and S–CHIP, which the regulation and S. 724 both seek to close. The response in the regulation does not refer to benefits, so the reference in your recent letter that ''gaps remain'' is taken out of context and, in fact, an incorrect referencing of the regulation.

Under both the regulation and the legislation, the states ultimately determine the benefit package. That feature of your legislation does not differ from the rule. And, we have clearly indicated federal funds will be available for services including prenatal care and labor and delivery. Your letter makes assumptions regarding medical services during pregnancy and delivery that HHS does not. The letter confuses medical decisions that are made by physicians with payment of claims under a public assistance program. The regulation is used to establish eligibility for benefits and does not itself extend into medical decision-making between a woman and her physician. HHS responded to a number of questions regarding services and clearly indicated federal financial participation would be available. There is no need to further question whether a claim for a service already provided will receive federal matching funds.

The issue of 12 months continuous eligibility is an option for the states. Under the regulation, states that want to extend eligibility can easily do so.

I hope this explanation of the regulation and where it extends beyond the reach of S. 724 will give you confidence in our policy and it's ability to meet the ultimate goal that you and I have worked over the years to meet. You are due a large measure of credit for your efforts on behalf of low-income women and their children. The regulation is a victory for those women and children and will give otherwise uncovered needy mothers and their babies a healthy start in life.

Sincerely,

TOMMY G. THOMSPON.

U.S. SENATE,
Washington, DC, October 23, 2002.

Hon. TOMMY THOMPSON,
Secretary, Department of Health and Human Services, Washington, DC.

DEAR SENATOR THOMPSON: Thank you for your letter yesterday with regard to improving health coverage for pregnant women and children. We appreciate your stated desire to ''give otherwise uncovered needy mothers and their babies a healthy start in life'' by adding ''to the options available to the states in expanding health insurance options.'' We believe we can take the best aspects of the legislation and the regulation to truly improve the health and well-being of our nation's children and mothers.

In light of the fact that our nation ranks 26th in infant mortality and 21st in maternal mortality in the world, which is the worst among developed nations, we would be remiss to not take the simple but critical step of increasing access to prenatal, delivery, and postpartum care through the State Children's Health Insurance Program (SCHIP) to help prevent birth defects and prematurity, the most common causes of infant death and disability, and maternal death and disability.

As your letter acknowledges, postpartum care is not covered under the regulation. This gap in coverage includes a range of critical care for women, including potentially life-saving postpartum care for hemorrhage, pregnancy-induced hypertension, infection, ectopic pregnancy, embolism, episiotomy repair, Caesarean section repair, family planning counseling, postpartum depression, and other complications of pregnancy and childbirth. In fact, according to the National Committee for Quality Assurance (NCQA), ''Hemorrhage, pregnancy-induced hypertension, infection, and ectopic pregnancy continue to account for more than half of all maternal deaths (59 percent).''

According to the Centers for Disease Control and Prevention (CDC), there were 3,193 pregnancy-related deaths in this country between 1991 and 1997 for an overall pregnancy-related mortality ratio (PRMR) of 11.5 per 100,000 live births. Racial disparities are rather dramatic with respect to maternal mortality. African-American women had mortality rates over four times higher than that of non-Hispanic whites over the period. American Indian/Alaska Natives, Asian/Pacific Islanders, and Hispanic women had mortality rates 67 percent, 55 percent, and 41 percent, respectively, higher than non-Hispanic whites.

Those disparities are even more pronounced in some states. For example, in Wisconsin, the maternal mortality rate for African-American women was 4.2 times that of white women between 1987 and 1996. Certainly, this is something that we can all agree should be addressed.

To allow states the option to provide comprehensive coverage to pregnant women, including postpartum care, through SCHIP would help achieve that important goal. S. 724, the ''Mothers and Newborns Health Insurance Act,'' gives states that important coverage option while the regulation does not.

While your letter correctly notes that states may receive comprehensive 1115 waivers to provide coverage to pregnant women, your regulation is correct in noting that is an inferior option. As the regulation reads, ''. . . the Secretary's ability to intervene through one mechanism (a waiver) should not be the sole option for States and may in fact be an inferior option. Waivers are discretionary on the part of the Secretary and time limited while State plan amendments are permanent, and are subject to budget neutrality.'' We should remove those barriers and give states the option to provide pregnant women coverage without having to seek waivers.

We would add that the waiver option is allowed for the purposes of giving the Secretary demonstration authority. We certainly can all acknowledge that coverage of pregnant women has reduced both infant mortality and maternal mortality and need not be demonstrated any further. The waiver process seems inappropriate for this purpose. Instead, we should remove those barriers for states to provide comprehensive coverage to pregnant women. As the National Governors' Association has stated in its policy (HR–15. ''The State Children's Health Insurance Program (S–CHIP) Policy''): The Governors call on Congress to create a state option that would allow states to provide health coverage to income-eligible women under SCHIP. This small shift in federal policy would allow states to provide critical prenatal care and would increase the likelihood that children born to SCHIP mothers would have a healthy start.

Just as the governors have requested, we can still make that ''small shift'' in policy through the passage of S. 724.

As for the coverage of infants, your letter did not address the issues raised in a previous letter to you from 15 senators, including many of us, dated October 10, 2002. Your letter restates the fact that states have the option to provide children 12 months of continuous eligibility in Medicaid and SCHIP. However, under the regulation, the 12-month continuous eligibility for children is not from the time of birth. Rather, the clock begins running during the time of coverage prior to birth. Thus, it is likely that most newborns would have far less than 12 months of coverage after birth if a State chooses to use the option to provide care to ''unborn children.'' If covered for the full nine months of pregnancy, the child could lose eligibility for SCHIP after the third month of life and consequently lose important coverage for well-baby visits, immunizations, and access to their pediatric caregiver. That would be an outright reduction of coverage for some children after birth.

We would note that the legislation continues to have the strong support of a number of groups, including some who support the regulation but acknowledge its shortcomings and continue to support passing legislation. Those groups include the American Association of University Affiliated Programs, the American Academy of Pediatrics, the American College of Nurse Midwives, the American College of Obstetrics and Gynecologists, the American Hospital Association, the American Medical Association, the American Public Health Association, the Association of Women's Health, Obstetric and Neonatal Nurses, the Association of Maternal and Child Health Programs, the Catholic Health Association, Catholic Charities USA, the Council of Women's and Infants' Specialty Hospitals, the Easter Seals, FamilyVoices, the March of Dimes, the National Association of Children's Hospitals, the National Association of Public Hospitals and Health Systems, the National Women's Health Network, the National Association of County and City Health Officials, the Society for Maternal-Fetal Medicine, the Spina Bifida Association of America, the Alan Guttmacher Institute, and the United Cerebral Palsy Associations.

There are certainly areas where the regulation is more comprehensive than the legislation, such as providing coverage to the ''unborn children'' of immigrant mothers and by providing states easier access to enhanced matching funds. We believe we could certainly amend S. 724 to address these shortcomings rather easily. It would be easy to drop the requirement in the bill for a state to expand eligibility to 185 percent of poverty before receiving the enhanced matching rate. However, this begs the question about the need for providing additional resources in SCHIP to cover these options. Current projections by the Office of Management and Budget indicate that SCHIP funds will ultimately be inadequate to cover all the children currently enrolled, even though millions of additional children are eligible but not currently covered. S. 724 provides such funding, which the regulation does not and cannot.

In short, we believe that we can rather quickly achieve the best of both the legislation and the regulation. S. 724 expands state options to cover critically important postpartum services for women, ensures children are eligible for coverage throughout the first and most critical year of life, and provides much needed resources to provide such care. In contrast, the regulation provides states with more opportunities to access enhanced matching funds and provides certain prenatal care services to immigrant mothers that S. 724 does not provide.

We would like to arrange a meeting with you or your staff to jointly modify S. 724 to address, as best as we can, the concerns we have discussed above and that you have raised with the legislation to accomplish the objective we all share of improving the health and well-being of out nation's children and mothers.

Sincerely,

Jeff Bingaman. Blanche L. Lincoln. Jon Corzine. Maria Cantwell. Patty Murray. Mary Landrieu. James M. Jeffords. Edward M. Kennedy. Hillary Rodham Clinton. Charles E. Schumer. John F. Kerry. John R. Edwards. Daniel K. Akaka. Jack Reed. Robert G. Torricelli.

Mr. LUGAR. Mr. President, I rise today with my colleague Senator BINGAMAN to re-introduce the Start Healthy, Stay Healthy Act of 2003.

The United States ranks 26th in infant mortality and 21st in maternal mortality in the world, the worst among developed nations. Study after study shows that providing prenatal care to pregnant women reduces maternal and infant mortality and the incidence of low birth weight babies. According to the American Medical Association, ''Babies born to women who do not receive prenatal care are four times more likely to die before their first birthday.''

The Start Healthy, Stay Healthy Act of 2003 would significantly reduce the number of uninsured pregnant women and newborns by providing States with the option to further extend coverage to pregnant women through Medicaid and CHIP, to reduce infant and maternal mortality and low birth weight babies, and to cover newborns through the first full year of life.

Current federal law allows pregnant women to receive coverage through CHIP through age 18—creating a perverse Federal incentive of covering only teenage pregnant women and cutting off that coverage once they turn 19 years of age. This legislation would eliminate this problem by allowing States to cover pregnant women through CHIP, regardless of age. This also eliminates the unfortunate separation between pregnant women and infants that has been created through CHIP, and is contrary to longstanding federal policy through programs such as Medicaid, Women with Infants and Children, WIC, Maternal and Child Health, MCH, etc.

An estimated 4.3 million, or 32 percent, of mothers below 200 percent of poverty are uninsured. According to the March of Dimes, ''Over 95 percent of all uninsured pregnant women could be covered through a combination of aggressive Medicaid outreach, maximizing coverage for young women through [CHIP], and expanding CHIP to cover income-eligible pregnant women regardless of age.''

Increasing the availability of affordable health care is certainly an issue of great importance to our Nation—particularly those who are uninsured. While our bill will not solve the problem of the uninsured, we believe that helping more pregnant women and babies receive care is a significant step in the right direction.

I ask our colleagues to support the Start Healthy, Stay Healthy Act of 2003, and help us take this important step in improving health care for the mothers of tomorrow.

By Mrs. FEINSTEIN (for herself, Mr. SCHUMER, Mr. CHAFEE, Mr. JEFFORDS, Mr. KENNEDY, Mr. DURBIN, Mr. LAUTENBERG, Mrs. BOXER, and Mr. REED):

S. 1034. A bill to repeal the sunset date on the assault weapons ban, to ban the importation of large capacity ammunition feeding devices, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce legislation with Senators CHUCK SCHUMER, LINCOLN CHAFEE, BARBARA BOXER, DICK DURBIN, JACK REED, FRANK LAUTENBERG, JIM JEFFORDS, and EDWARD KENNEDY that would permanently reauthorize the assault weapons ban and close the clip-importation loophole.

Military-style assault weapons simply have no place on America's streets. But if Congress fails to act, the current ban will expire next year. This would be a terrible mistake.

This is why Congress must reauthorize the ban and close the high-capacity

clip importation loophole so that we can help keep America's streets safe from the violence produced by assault weapons.

Almost 10 years ago on July 1, 1993 Gian Luigi Ferri walked into 101 California Street in San Francisco carrying two high-capacity TEC–9 assault pistols.

Within minutes, he had murdered eight people, and six others were wounded. This tragedy shook San Francisco and the entire nation.

We saw with absolute clarity the destruction that could be inflicted with these military-style assault weapons.

Navegar's advertising for the TEC–9 touted the gun as being for 'paramilitary' use and 'resistant to fingerprints,' with a 'military non-glare finish,' a 'military blowback system,' and 'combat-type' sights.

Guns like these are the weapons of choice to commit crimes. They are the weapons of choice for drive-by shooters, criminals going into a major criminal event, and malcontents who are seeking to do the maximum damage possible in the shortest amount of time.

That's what makes them so dangerous because they have light triggers, you can spray fire them, you can hold them with two hands, and you don't really need to aim.

They are not weapons of choice for hunting or defensive purposes.

In the aftermath of 101 California and countless other shootings, I decided to do something that no one had succeeded in doing before: to ban the manufacture and importation of military style assault weapons.

I authored the bill in the Senate, and Senator SCHUMER authored it in the House of Representatives.

I remember all the late night calls I got and all the friends who took me aside and said to me: ''Don't do it. The gunners are too powerful. You'll never ever win.''

Well, we did win. We passed the first-ever ban on assault weapons, and since September 13, 1994, it has been illegal to manufacture and import military-style assault weapons.

The hope of the bill has been to drive down the supply of these weapons and make them more expensive to obtain.

And in the years following the enactment of the ban, crimes using assault weapons were reduced dramatically.

In 1993, assault weapons accounted for 8.2 percent of all guns used in crimes; By the end of 1995, that proportion had fallen to 4.3 percent—a dramatic drop; and by November 1996, the last date for which statistics are available, the proportion had fallen to 3.2 percent.

These are dramatic results, which show that the Assault Weapons ban has worked. We have had trouble getting updated statistics from this Justice Department, but it is clear that after we banned these guns, criminals used them less frequently in crime.

Unfortunately, to get the bill passed in 1994, we had to agree to a ten-year sunset in the bill—and this is why we are here today. If we do not re-authorize the 1994 assault weapons ban this Congress, it will expire on September 13, 2004.

That means that at the end of next year, manufacturers could once again begin making AK–47s, TEC–9s, and other banned guns that have but one purpose—to kill other human beings.

We are here today because we believe that this would be a terrible mistake—with deadly consequences for thousands of Americans each year.

So today we will introduce legislation to do two simple things. First, the legislation would reauthorize the 1994 assault weapons ban by striking the sunset date from the original law. This would ban the manufacture of 19 types of common military style assault weapons—for all time.

It would ban an additional group of these assault weapons that have been banned by characteristic for 8 years.

It would protect some 670 hunting and other recreational rifles for use by law-abiding citizens.

And it would preserve the right of police officers and other law enforcement officials to use and obtain newly manufactured semi-automatic assault weapons—helping to prevent instances when law enforcement agents are outgunned by perpetrators.

We certainly would like a stronger bill that would tighten the ban—based on our 10 years of experience of what the gun companies have done to get around the bill.

But unfortunately there is not the support for that right now. If the support becomes evident, then we may amend the bill at a later date.

Second, the legislation would close a loophole in the 1994 law, which prohibits the domestic manufacture of high-capacity ammunition magazines, but allows foreign companies to continue sending them to this country by the millions.

A measure that would have closed this loophole passed the House and Senate in 1999 by wide margins, but got bottled up in a larger conference due to an unrelated provision.

The result: the Bureau of Alcohol, Tobacco and Firearms has approved the importation of almost 50 million high capacity ammunition magazines from some 50 countries since 1994.

It is these large clips, drums, and strips that allow lone gunmen, or small groups of teenagers, to inflict so much damage in such a small amount of time.

We must close this loophole now.

The good news: President Bush has indicated that he supports each of these provisions. During the 2000 Presidential Campaign, President Bush indicated that he supported both reauthorization of the assault weapons ban and closing the clip importation loophole.

And just a few weeks ago, President Bush's spokesman Scott McClellan reiterated his support for reauthorizing the ban when he said: ''The President supports the current law, and he supports reauthorization of the current law.''

It is therefore our hope that the President will work with us to see this bill passed. We welcome the President's support and look forward to working with him to gain swift passage of this legislation.

One of the best examples of the damage that assault weapons can inflict is the massacre in Littleton, Colorado.

On April 24, 1999, Eric Harris and Dylan Klebold used a TEC DC–9 semi-automatic pistol to attack the students and teachers of Columbine High School.

They used this weapon to take the lives of 13 innocents, 12 students and 1 teacher, and injured dozens more mothers, fathers, sons and daughters.

I do not believe that the 2nd Amendment protects military assault weapons. The Constitution is not an umbrella for mayhem. The Bill of Rights is not a guarantor of violence.

Congress has passed this legislation once—it is time to pass the assault weapons ban again.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1034

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 ''Assault Weapons Ban Reauthorization Act of 2003''.

SEC. 2. REPEAL OF SUNSET DATE.

Section 110105 of the Public Safety and Recreational Firearms Use Protection Act (18 U.S.C. 921 note) is amended to read as follows:

''SEC. 110105. EFFECTIVE DATE.

''This subtitle and the amendments made by this subtitle shall take effect on September 13, 1994.''.

SEC. 3. BAN ON IMPORTING LARGE CAPACITY AMMUNITION FEEDING DEVICES.

(a) IN GENERAL.—Section 922(w) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking ''(1) Except as provided in paragraph (2)'' and inserting ''(1)(A) Except as provided in subparagraph (B)'';

(2) in paragraph (2), by striking ''(2) Paragraph (1)'' and inserting ''(B) Subparagraph (A)'';

(3) by inserting before paragraph (3) the following:

''(2) It shall be unlawful for any person to import a large capacity ammunition feeding device.''; and

(4) in paragraph (4)—

(A) by striking ''(1)'' each place it appears and inserting ''(1)(A)''; and

(B) by striking ''(2)'' and inserting ''(1)(B)''.

(b) CONFORMING AMENDMENT.—Section 921(a)(31) of title 18, United States Code, is amended by striking ''manufactured after the date of enactment of the Violent Crime Control and Law Enforcement Act of 1994''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 134—TO AUTHORIZE REPRESENTATION BY THE SENATE LEGAL COUNSEL IN NEWDOW V. EAGEN, ET AL

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

Whereas, S. Res. 343, 107th Congress, authorizes the Senate Legal Counsel to represent the Secretary of the Senate and the Senate Financial Clerk in the case of *Newdow* v. *Eagen, et al.*, Case No. 1:02CV01704, pending in the United States District Court for the District of Columbia;

Whereas, additional defendents have been named in that case; and

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(a) and 288c(a)(1), the Senate may direct its counsel to represent officers and employees of the Senate in civil actions with respect to their official responsibilities: Now, therefore, be it *Resolved* That the Senate Legal Counsel is authorized to represent all Senate defendents in the case of *Newdow* v. *Eagen, et al.*

SENATE RESOLUTION 135—EXPRESSING THE SENSE OF THE SENATE THAT CONGRESS SHOULD PROVIDE ADEQUATE FUNDING TO PROTECT THE INTEGRITY OF THE FREDERICK DOUGLASS NATIONAL HISTORIC SITE

Mr. FRIST (for himself and Mr. BROWNBACK, and Mr. TALENT) submitted the following resolution; which was referred to the Committee on Energy and Natural Resources:

S. RES. 135

Whereas Frederick Douglass freed himself from slavery and, through decades of tireless efforts, helped to free millions more;

Whereas as a major stationmaster on the Underground Railroad, Frederick Douglass directly helped hundreds on their way to freedom through his adopted home city of Rochester, New York;

Whereas Frederick Douglass learned to write and do arithmetic on his own initiative;

Whereas as a publisher of the North Star and Frederick Douglass' Paper, Frederick Douglass brought news of the antislavery movement to thousands of people;

Whereas Frederick Douglass helped recruit African-American troops for the Union Army and his personal relationship with Abraham Lincoln helped to persuade the President to make emancipation a cause of the Civil War;

Whereas in 1872, Frederick Douglass moved to Washington, D.C., where he initially served as publisher of the New National Era, intending to carry forward the work of elevating the position of African Americans in the post-emancipation period; and

Whereas Frederick Douglass also served briefly as President of the Freedmen's National Bank and subsequently in various national service positions, including United States Marshal for the District of Columbia and diplomatic positions in Haiti and the Dominican Republic: Now, therefore, be it

Resolved, That it is the sense of the Senate that Congress should provide adequate funding to protect the integrity of the Frederick Douglass National Historic Site.

SENATE RESOLUTION 136—RECOGNIZING THE 140TH ANNIVERSARY OF THE FOUNDING OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, AND CONGRATULATING MEMBERS AND OFFICERS OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE UNION'S MANY ACHIEVEMENTS

Mr. DASCHLE (for Mr. KENNEDY (for himself and Mr. VOINOVICH)) submitted the following resolution; which was referred to the Committee on the Judiciary:

Whereas the Brotherhood of Locomotive Engineers was founded on May 8, 1863, as a secret, fraternal labor organization and its first meetings were held clandestinely for fear of reprisals from railroad management;

Whereas the climate toward labor organizations at that time was extraordinarily hostile, and many of the other newly founded labor organizations failed to withstand the negative pressures placed upon them and disbanded in their infancies;

Whereas the Brotherhood of Locomotive Engineers began to thrive despite the climate into which it was born;

Whereas the Brotherhood of Locomotive Engineers has grown from its original 13 members, all from the Michigan Central Railroad, to 59,000 active and retired members employed throughout the United States and Canada;

Whereas the Brotherhood of Locomotive Engineers is North America's oldest rail labor union;

Whereas the Brotherhood of Locomotive Engineers' members have contributed, both directly through their railroad activity and in private capacities, to the war effort in all of the battles of the United States dating back to the Civil War;

Whereas their efforts to improve rail safety for both their members and the public have resulted in a dramatic decrease in the number of railroad accidents in the years since their inception;

Whereas in 1964, the Brotherhood of Locomotive Engineers launched an apprentice engineer program to assure the Nation of a stable supply of well-trained locomotive engineers, and to assure stable employment and earnings to apprentices;

Whereas after accepting only promoted locomotive engineers in its early years, the Brotherhood of Locomotive Engineers enlarged its membership goals to include other rail employees;

Whereas in 1993, the 2,500 member American Train Dispatchers Association officially affiliated with the Brotherhood of Locomotive Engineers in order to unite the two key railway professions that facilitate the efficient and safe movement of passengers and freight;

Whereas in 1995, the Rail Canada Traffic Controllers union also chose to merge into the Brotherhood of Locomotive Engineers, adding another 700 members;

Whereas in addition to providing representation for its members, the Brotherhood of Locomotive Engineers aggressively participates in the labor movement with other unions and organizations in promoting the interests of working men and women and their families;

Whereas the Brotherhood of Locomotive Engineers is an extraordinary union whose leadership still works hard every day—just as it did in 1863—to protect members' health and safety, to guard their financial interests, to give them an effective voice on the job, and to ensure dignity, respect, and security for railway workers in the workplace; and

Whereas the efforts of the Brotherhood of Locomotive Engineers are deserving of our attention and admiration: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the union which has made a tremendous contribution to the structural development and building of the United States, and to the well-being of tens of thousands of workers;

(2) congratulates the union for its many achievements and the strength of its members; and

(3) expects that the union will continue its dedicated work and will have an even greater impact in the 21st century and beyond, and will enhance the standard of living and working environment for rail workers and other laborers in generations to come.

SENATE RESOLUTION 137—HONORING JAMES A JOHNSON, CHAIRMAN OF THE BOARD OF TRUSTEES OF THE JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

Mr. FRIST (for himself, Mr. DASCHLE, Mr. STEVENS, Mr. KENNEDY, Mr. JEFFORDS, Mr. INHOFE, Mrs. HUTCHISON, and Mrs. FEINSTEIN) submitted the following resolution; which was considered and agreed to:

Whereas James A. Johnson has served with distinction since 1996 as the Chairman of the Board of Trustees of the John F. Kennedy Center for the Performing Arts, which is the national center for the performing arts;

Whereas under the leadership of Jim Johnson, the Kennedy Center has earned impressive renown, and become one of the finest performing arts institutions in the Nation and around the world;

Whereas Jim Johnson initiated free public performances each evening on the Millennium Stage at the Kennedy Center, and these performances have now included a total of 25,000 performers and reached an audience of 1,500,000 persons since 1997;

Whereas the arts education programs of the Kennedy Center have been significantly expanded under the inspired leadership of Jim Johnson;

Whereas Jim Johnson has launched a major renovation and construction project to improve the physical structure of the Kennedy Center and enrich the experience of all who visit and attend performances; and

Whereas Jim Johnson deserves the thanks of a grateful Nation for his leadership at the Kennedy Center, and in bringing new vitality to the cultural heritage of our Nation: Now, therefore, be it

Resolved, That the Senate—

(1) expresses its appreciation for all that Jim Johnson has accomplished; and

(2) commends Jim Johnson for his extraordinary achievements as Chairman of the John F. Kennedy Center for the Performing Arts.

AMENDMENTS SUBMITTED & PROPOSED

SA 536. Mr. FEINGOLD proposed an amendment to the bill S. 113, to amend the Foreign Intelligence Surveillance Act of 1978 to cover individuals, other than United States persons, who engage in international terrorism without affiliation with an international terrorist group.

SA 537. Mrs. FEINSTEIN (for herself, Mr. ROCKEFELLER, Mr. LEAHY, Mr. EDWARDS, Mr. FEINGOLD, Mr. DODD, Mr. WYDEN, and Mrs. BOXER) proposed an amendment to the bill S. 113, supra.

SA 538. Mrs. HUTCHISON (for Mr. MCCAIN (for herself, Mr. HOLLINGS, Mrs. HUTCHISON, and Mrs. BOXER)) proposed an amendment to the bill S. 165, to improve air cargo security.

TEXT OF AMENDMENTS

SA 536. Mr. FEINGOLD proposed an amendment to the bill S. 113, to amend the Foreign Intelligence Surveillance Act of 1978 to cover individuals, other than United States persons, who engage in international terrorism without affiliation with an international terrorist group; as follows:

At the end, add the following:

SEC. 2. ADDITIONAL ANNUAL REPORTING REQUIREMENTS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) ADDITIONAL REPORTING REQUIREMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by redesignating—

(A) title VI as title VII; and

(B) section 601 as section 701; and

(2) by inserting after title V the following new title VI:

''TITLE VI—REPORTING REQUIREMENT

''ANNUAL REPORT OF THE ATTORNEY GENERAL

''SEC. 601. (a) In addition to the reports required by sections 107, 108, 306, 406, and 502 in April each year, the Attorney General shall submit to the appropriate committees of Congress each year a report setting forth with respect to the one-year period ending on the date of such report—

''(1) the aggregate number of non-United States persons targeted for orders issued under this Act, including a break-down of those targeted for—

''(A) electronic surveillance under section 105;

''(B) physical searches under section 304;

''(C) pen registers under section 402; and

''(D) access to records under section 501;

''(2) the number of individuals covered by an order issued under this Act who were determined pursuant to activities authorized by this Act to have acted wholly alone in the activities covered by such order;

''(3) the number of times that the Attorney General has authorized that information obtained under this Act may be used in a criminal proceeding or any information derived therefrom may be used in a criminal proceeding; and

''(4) in a manner consistent with the protection of the national security of the United States—

''(A) the portions of the documents and applications filed with the courts established under section 103 that include significant construction or interpretation of the provisions of this Act, not including the facts of any particular matter, which may be redacted;

''(B) the portions of the opinions and orders of the courts established under section 103 that include significant construction or interpretation of the provisions of this Act, not including the facts of any particular matter, which may be redacted.

''(b) The first report under this section shall be submitted not later than six months after the date of the enactment of this Act. Subsequent reports under this section shall be submitted annually thereafter.

''(c) In this section, the term 'appropriate committees of Congress' means—

''(1) the Select Committee on Intelligence and the Committee on the Judiciary of the Senate; and

''(2) the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.''.

(b) CLERICAL AMENDMENT.—The table of contents for that Act is amended by striking the items relating to title VI and inserting the following new items:

''TITLE VI—REPORTING REQUIREMENT

''Sec. 601. Annual report of the Attorney General.

''TITLE VII—EFFECTIVE DATE

''Sec. 701. Effective date.''.

SA 537. Mrs. FEINSTEIN (for herself, Mr. ROCKEFELLER, Mr. LEAHY, Mr. EDWARDS, Mr. FEINGOLD, Mr. DODD, Mr. WYDEN, and Mrs. BOXER) proposed an amendment to the bill S. 113, to amend the Foreign Intelligence Surveillance Act of 1978 to cover individuals, other than United States persons, who engage in international terrorism without affiliation with an international terrorist group; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. PRESUMPTION THAT CERTAIN NON-UNITED STATES PERSONS ENGAGING IN INTERNATIONAL TERRORISM ARE AGENTS OF FOREIGN POWERS FOR PURPOSES OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) PRESUMPTION.—(1) The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after section 101 the following new section:

''PRESUMPTION OF TREATMENT OF CERTAIN NON-UNITED STATES PERSONS ENGAGED IN INTERNATIONAL TERRORISM AS AGENTS OF FOREIGN POWERS

''SEC. 101A. Upon application by the Federal official applying for an order under this Act, the court may presume that a non-United States person who is knowingly engaged in sabotage or international terrorism, or activities that are in preparation therefor, is an agent of a foreign power under section 101(b)(2)(C).''.

(2) The table of contents for that Act is amended by inserting after the item relating to section 101 the following new item:

''Sec. 101A. Presumption of treatment of certain non-United States persons engaged in international terrorism as agents of foreign powers.''.

(b) SUNSET.—The amendments made by subsection (a) shall be subject to the sunset provision in section 224 of the USA PATRIOT Act of 2001 (Public Law 107–56; 115 Stat. 295), including the exception provided in subsection (b) of such section 224.

SA 538. Mrs. HUTCHISON (for Mr. MCCAIN (for himself, Mr. HOLLINGS, Mrs. HUTCHISON, and Mrs. BOXER)) proposed an amendment to the bill S. 165, to improve air cargo security; as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Air Cargo Security Improvement Act''.

SEC. 2. INSPECTION OF CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

Section 44901(f) of title 49, United States Code, is amended to read as follows:

''(f) CARGO.—

''(1) IN GENERAL.—The Under Secretary of Transportation for Security shall establish systems to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in—

''(A) passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation; or

(B) all-cargo aircraft in air transportation and intrastate air transportation.

''(2) STRATEGIC PLAN.—The Under Secretary shall develop a strategic plan to carry out paragraph (1) within 6 months after the date of enactment of the Air Cargo Security Improvement Act.

''(3) PILOT PROGRAM.—The Under Secretary shall conduct a pilot program of screening of cargo to assess the effectiveness of different screening measures, including the use of random screening. The Under Secretary shall attempt to achieve a distribution of airport participation in terms of geographic location and size.''.

SEC. 3. AIR CARGO SHIPPING.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

''§ 44922. Regular inspections of air cargo shipping facilities

''The Under Secretary of Transportation for Security shall establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, and shall enter into arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States.''.

(b) ADDITIONAL INSPECTIONS.—The Under Secretary may increase the number of inspectors as necessary to implement the requirements of title 49, United States Code, as amended by this subtitle.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, is amended by adding at the end the following:

''44922. Regular inspections of air cargo shipping facilities''.

SEC. 4. CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is further amended by adding at the end the following:

''§ 44923. Air cargo security

''(a) DATABASE.—The Under Secretary of Transportation for Security shall establish an industry-wide pilot program database of known shippers of cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. The Under Secretary shall use the results of the pilot program to improve the known shipper program.

''(b) INDIRECT AIR CARRIERS.—

''(1) RANDOM INSPECTIONS.—The Under Secretary shall conduct random audits, investigations, and inspections of indirect air carrier facilities to determine if the indirect air carriers are meeting the security requirements of this title.

''(2) ENSURING COMPLIANCE.—The Under Secretary may take such actions as may be appropriate to promote and ensure compliance with the security standards established under this title.

''(3) NOTICE OF FAILURES.—The Under Secretary shall notify the Secretary of Transportation of any indirect air carrier that fails to meet security standards established under this title.

''(4) WITHDRAWAL OF SECURITY PROGRAM APPROVAL.—The Under Secretary may issue an order amending, modifying, suspending, or revoking approval of a security program of an indirect air carrier that fails to meet security requirements imposed by the Under Secretary is such failure threatens the security of air transportation or commerce. The affected indirect air carriers shall be given notice and the opportunity to correct its

noncompliance unless the Under Secretary determines that an emergency exists. Any indirect air carrier that has the approval of its security program amended, modified, suspended, or revoked under this section may appeal the action in accordance with procedures established by the Under Secretary under this title.

''(5) INDIRECT AIR CARRIER.—In this subsection, the term 'indirect air carrier' has the meaning given that term in part 1548 of title 49, Code of Federal Regulations.

''(c) CONSIDERATION OF COMMUNITY NEEDS.—In implementing air cargo security requirements under this title, the Under Secretary may take into considerations the extraordinary air transportation needs of small or isolated communities and unique operational characteristics of carriers that serve those communities.''.

(b) ASSESSMENT OF INDIRECT AIR CARRIERS PROGRAM.—The Under Secretary of Transportation for Security shall assess the security aspects of the indirect air carrier program under part 1548 of title 49, Code of Federal Regulations, and report the result of the assessment, together with any recommendations for necessary modifications of the program to the Senate Committee on Commerce, Science, and Transportation and Infrastructure within 60 days after the date of enactment of this Act. The Under Secretary may submit the report and recommendations in classified form.

(c) REPORT TO CONGRESS ON RANDOM AUDITS.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on random screening, audits, and investigations of air cargo security programs based on threat assessment and other relevant information. The report may be submitted in classified form.

(d) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, as amended by section 3, is amended by adding at the end the following: ''44923. Air cargo security''.

SEC. 5. TRAINING PROGRAM FOR CARGO HANDLERS.

The Under Secretary of Transportation for Security shall establish a training program for any persons that handle air cargo to ensure that the cargo is properly handled and safe-guarded from security breaches.

SEC. 6. CARGO CARRIED ABOARD ALL-CARGO AIRCRAFT.

(a) IN GENERAL.—The Under Secretary of Transportation for Security shall establish a program requiring that air carriers operating all-cargo aircraft have an approved plan for the security of their air operations area, the cargo placed aboard such aircraft, and persons having access to their aircraft on the ground or in flight.

(b) PLAN REQUIREMENTS.—The plan shall include provisions for—

(1) security of each carrier's air operations areas and cargo acceptance areas at the airports served;

(2) background security checks for all employees with access to the air operations area;

(3) appropriate training for all employees and contractors with security responsibilities;

(4) appropriate screening of all flight crews and persons transported aboard all-cargo aircraft;

(5) security procedures for cargo placed on all-cargo aircraft as provided in section 44901(f)(1)(B) of title 49, United States Code; and

(6) additional measures deemed necessary and appropriately by the Under Secretary.

(c) CONFIDENTIAL INDUSTRY REVIEW AND COMMENT.—

(1) CIRCULATION OF PROPOSED PROGRAM.—The Under Secretary shall—

(A) propose a program under subsection (a) within 90 days after the date of enactment of this Act; and

(B) distribute the proposed program, on a confidential basis, to those air carriers and other employers to which the program will apply.

(2) COMMENT PERIOD.—Any person to which the proposed program is distributed under paragraph (1) may provide comments on the proposed program to the Under Secretary not more than 60 days after it was received.

(3) FINAL PROGRAM.—The Under Secretary of Transportation shall issue a final program under subsection (a) not later than 90 days after the last date on which comments may be provided under paragraph (2). The final program shall contain time frames for the plans to be implemented by each air carrier or employer to which it applies.

(4) SUSPENSION OF PROCEDURAL NORMS.—Neither chapter 5 of title 5, United States Code, nor the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the program required by this section.

SEC. 7. REPORT ON PASSENGER PRESCREENING PROGRAM.

(a) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security, after consultation with the Attorney General, shall submit a report in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the potential impact of the Transportation Security Administration's proposed Computer Assisted Passenger Prescreening system, commonly known as CAPPS II, on the privacy and civil liberties of United States Citizens.

(b) SPECIFIC ISSUES TO BE ADDRESSED.—The report shall address the following:

(1) Whether and for what period of time data gathered on individual travelers will be retained, who will have access to such data, and who will make decisions concerning access to such data.

(2) How the Transportation Security Administration will treat the scores assigned to individual travelers to measure the likelihood they may pose a security threat, including how long such scores will be retained and whether and under what circumstances they may be shared with other governmental, non-governmental, or commercial entities.

(3) The role airlines and outside vendors or contractors will have in implementing and operating the system, and to what extent will they have access, or the means to obtain access, to data, scores, or other information generated by the system.

(4) The safeguards that will be implemented to ensure that data, scores, or other information generated by the system will be used only as officially intended.

(5) The procedures that will be implemented to mitigate the effect of any errors, and what procedural recourse will be available to passengers who believe the system has wrongly barred them from taking flights.

(6) The oversight procedures that will be implemented to ensure that, on an ongoing basis, privacy and civil liberties issues will continue to be considered and addressed with high priority as the system is installed, operated and updated.

SEC. 8. MODIFICATION OF REQUIREMENTS REGARDING TRAINING TO OPERATE AIRCRAFT.

(a) IN GENERAL.—Section 44939 of title 49, United States Code, is amended to read as follows:

''§ 44939. Training to operate certain aircraft

''(a) IN GENERAL.—

''(1) WAITING PERIOD.—A person subject to regulation under this part may provide training in the United States in the operation of an aircraft to an individual who is an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) or to any other individual specified by the United Secretary of Homeland Security for Border and Transportation Security only if—

''(A) that person has notified the Under Secretary that the individual has requested such training and furnished the Under Secretary with that individual's identification in such form as the Under Secretary may require; and

''(B) the Under Secretary has not directed, within 30 days after being notified under subparagraph (A), that person not to provide the requested training because the Under Secretary has determined that the individual presents a risk to aviation security or national security.

''(2) NOTIFICATION-ONLY INDIVIDUALS.—

''(A) IN GENERAL.—The requirements of paragraph (1) shall not apply to an alien individual who holds a visa issued under title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and who—

''(i) has earned a Federal Aviation Administration type rating in an aircraft or has undergone type-specific training, or

''(ii) holds a current pilot's license or foreign equivalent commercial pilot's license that permits the person to fly an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds as defined by the International Civil Aviation Organization in Annex 1 to the Convention on International Civil Aviation,

if the person providing the training has notified the Under Secretary that the individual has requested such training and furnished the Under Secretary with that individual's via information.

''(B) EXCEPTION.—Subparagraph (A) does not apply to an alien individual whose airman's certificate has been suspended or revoked under procedures established by the Under Secretary.

''(3) EXPEDITED PROCESSING.—The waiting period under paragraph (1) shall be expedited for an individual who—

''(A) has previously undergone a background records check by the Foreign Terrorist Tracking Task Force;

''(B) is employed by a foreign air carrier certified under part 129 of title 49, Code of Federal Regulations, that has a TSA 1546 approved security program and who is undergoing recurrent flight training;

''(C) is a foreign military pilot endorsed by the United States Department of Defense for flight training; or

''(D) who has unescorted access to a secured area of an airport designated under section 44936(a)(1)(A)(ii).

''(4) INVESTIGATION AUTHORITY.—In order to determine whether an individual requesting training described in paragraph (1) presents a risk to aviation security or national security the Under Secretary is authorized to use the employment investigation authority provided by section 44936(a)(1)(A) for individuals applying for a position in which the individual has unescorted access to a secured area of an airport designated under section 44936(a)(1)(A)(ii).

''(5) FEE.—

''(A) IN GENERAL.—The Under Secretary may assess a fee for an investigation under this section, which may not exceed $100 per individual (exclusive of the cost of transmitting fingerprints collected at overseas facilities) during fiscal year 2003 and 2004. For fiscal year 2005 and thereafter, the Under Secretary may adjust the maximum amount of

the fee to reflect the costs of such an investigation.

''(B) OFFSET.—Nothwithstanding section 3302 of title 31, United States Code, any fee collected under this section—

''(i) shall be credited to the account in the Treasury from which the expenses were incurred and shall be available to the Under Secretary for those expenses; and

''(ii) shall remain available until expended.

''(b) INTERRUPTION OF TRAINING.—If the Under Secretary, more than 30 days after receiving notification under subsection (a)(1)(A) from a person providing training described in subsection (a)(1) or at any time after receiving notice from such a person under subsection (a)(2)(A), determines that an individual receiving such training presents a risk to aviation or national security, the Under Secretary shall immediately notify the person providing the training of the determination and that person shall immediately terminate the training.

''(c) COVERED TRAINING.—For purposes of subsection (a), the term 'training'—

''(1) includes in-flight training, training in a simulator, and any other form or aspect of training; but

''(2) does not include classroom instruction (also known as ground school training), which may be provided during the 30-day period described in subsection (a)(1)(B).

''(d) INTERAGENCY COOPERATION.—The Attorney General, the Director of Central Intelligence, and the Administrator of the Federal Aviation Administration shall cooperate with the Under Secretary in implementing this section.

''(e) SECURITY AWARENESS TRAINING FOR EMPLOYEES.—The Under Secretary shall require flight schools to conduct a security awareness program for flight school employees, and for certified instructors who provide instruction for the flight school but who are not employees thereof, to increase their awareness of suspicious circumstances and activities of individuals enrolling in or attending flight school.''.

''(b) PROCEDURES.—

''(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Under Secretary of Homeland Security for Border and Transportation Security shall promulgate an interim final rule to implement section 44939 of title 49, United States Code, as amended by subsection (a).

''(2) USE OF OVERSEAS FACILITIES.—In order to implement section 44939 of title 49, United States Code, as amended by subsection (a), United States Embassies and Consulates that possess appropriate fingerprint collection equipment and personnel certified to capture fingerprints shall provide fingerprint services to aliens covered by that section if the Under Secretary requires fingerprints in the administration of that section, and shall transmit the fingerprints to the Under Secretary or other agency designated by the Under Secretary. The Attorney General and the Secretary of State shall cooperate with the Under Secretary in carrying out this paragraph.

(3) USE OF UNITED STATES FACILITIES.—If the Under Secretary requires fingerprinting in the administration of section 44939 of title 49, United States Code, the Under Secretary may designate locations within the United States that will provide fingerprinting services to individuals covered by that section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on the effective date of the interim final rule required by subsection (b)(1).

(d) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the effectiveness of the activities carried out under section 44939 of title 49, United States Code, in reducing risks to aviation security and national security.

SEC. 9. PASSENGER IDENTIFICATION.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Under Secretary of Transportation for Security, in consultation with the Administrator of the Federal Aviation Administration, appropriate law enforcement, security, and terrorism experts, representatives of air carriers and labor organizations representing individuals employed in commercial aviation, shall develop guidelines to provide air carriers guidance for detecting false or fraudulent passenger identification. The guidelines may take into account new technology, current identification measures, training of personnel, and issues related to the types of identification available to the public. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any meeting held pursuant to this subsection.

(b) AIR CARRIER PROGRAMS.—Within 60 days after the Under Secretary issues the guidelines under subsection (a) in final form, the Under Secretary shall provide the guidelines to each air carrier and establish a joint government and industry council to develop recommendations on how to implement the guidelines.

(c) REPORT.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of this Act on the actions taken under this section.

SEC. 10. PASSENGER IDENTIFICATION VERIFICATION.

(a) PROGRAM REQUIRED.—The Under Secretary of Transportation for Security may establish and carry out a program to require the installation and use at airports in the United States of the identification verification technologies the Under Secretary considers appropriate to assist in the screening of passengers boarding aircraft at such airports.

(b) TECHNOLOGIES EMPLOYED.—The identification verification technologies required as part of the program under subsection (a) may include identification scanners, biometrics, retinal, iris, or facial scanners, or any other technologies that the Under Secretary considers appropriate for purposes of the program.

(c) COMMENCEMENT.—If the Under Secretary determines that the implementation of such a program is appropriate, the installation and use of identification verification technologies under the program shall commence as soon as practicable after the date of that determination.

SEC. 11. BLAST-RESISTANT CARGO CONTAINER TECHNOLOGY.

Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security, and the Administrator of the Federal Aviation Administration, shall jointly submit a report to Congress that contains—

(1) an evaluation of blast-resistant cargo container technology to protect against explosives in passenger luggage, and cargo;

(2) an examination of the advantages associated with the technology in preventing damage and loss of aircraft from terrorist action and any operational impacts which may result from use of the technology (particularly added weight and costs);

(3) an analysis of whether alternatives exist to mitigate the impacts described in paragraph (2) and options available to pay for the technology; and

(4) recommendations on what further action, if any, should be taken with respect to the use of blast-resistant cargo containers on passenger aircraft.

SEC. 12 ARMING PILOTS AGAINST TERRORISM.

(a) FINDINGS AND PURPOSE.—

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

(A) During the 107th Congress, both the Senate and the House of Representatives overwhelmingly passed measures that would have armed pilots of cargo aircraft.

(B) Cargo aircraft do not have Federal air marshals, trained cabin crew, or determined passengers to subdue terrorists.

(C) Cockpit doors on cargo aircraft, if present at all, largely do not meet the security standards required for commercial passenger aircraft.

(D) Cargo aircraft vary in size and many are larger and carry larger amounts of fuel than the aircraft hijacked on September 11, 2001.

(E) Aircraft cargo frequently contains hazardous material and can contain deadly biological and chemical agents and quantities of agents that caused communicable diseases.

(F) Approximately 12,000 of the Nation's 90,000 commercial pilots serve as pilots and flight engineers on cargo aircraft.

(G) There are approximately 2,000 cargo flights per day in the United States, many of which are loaded with fuel for outbound international travel or are inbound from foreign airports not secured by the Transportation Security Administration.

(H) aircraft transporting cargo pose a serious risk as potential terrorist targets that could be used as weapons of mass destruction.

(I) Pilots of cargo aircraft deserve the same ability to protect themselves and the aircraft they pilot as other commercial airline pilots.

(J) Permitting pilots of cargo aircraft to carry firearms creates an important last line of defense against a terrorist effort to commandeer a cargo aircraft.

(2) SENSE OF CONGRESS.—It is the sense of Congress that a member of a flight deck crew of a cargo aircraft should be armed with a firearm to defend the cargo aircraft against an attack by terrorists that could result in the use of the aircraft as a weapon of mass destruction or for other terrorist purposes.

(b) ARMING CARGO PILOTS AGAINST TERRORISM.—Section 44921 of title 49, United States Code, is amended—

(1) by striking ''passenger'' in subsection (a) each place that it appears;

(2) by striking ''or,'' and all that follows in subsection (k)(2) and inserting ''or any other flight deck crew member.''; and

(3) by adding at the end of subsection (k) the following:

''(3) ALL-CARGO AIR TRANSPORTATION.—For the purposes of this section, the term air transportation includes all-cargo air transportation.''.

(d) IMPLEMENTATION.—

(1) TIME FOR IMPLEMENTATION.—The training of pilots as Federal flight deck officers required in the amendments made by subsection (b) shall begin as soon as practicable and no later than 90 days after the date of enactment of this Act.

(2) EFFECT ON OTHER LAWS.—The requirements of subparagraph (1) shall have no effect on the deadlines for implementation contained in section 44921 of title 29, United States Code, as in effect on the day before the date of enactment of this Act.

SEC. 13. REPORT ON DEFENDING AIRCRAFT FROM MAN-PORTABLE AIR DEFENSE SYSTEMS (SHOULDER-FIRED MISSILES).

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act,

the Secretary of Homeland Security shall issue a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on how best to defend turbo and jet passenger aircraft from Man-Portable Air Defense Systems (shoulder-fired missiles).

(b) ISSUES TO BE ADDRESSED.—The report shall include an analysis of—

(1) actions taken to date, countermeasures, risk mitigation, and other activities;

(2) existing military countermeasure systems and how those systems might be adapted to commercial aircraft applications;

(3) means of reducing the costs of military countermeasure system by modifying them for use on commercial aircraft; and

(4) the extent of the threat and the need for countermeasures.

(c) REPORT FORMAT.—The report may be submitted in classified form.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out this Act and sections 44901(f), 44922, and 44923 of title 49, United States Code, for fiscal years 2004 through 2008.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. COLEMAN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, May 8, 2003 at 9:45 a.m. in closed session to mark up the Department of Defense Authorization Act for Fiscal Year 2004.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. COLEMAN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, May 8, 2003, at 9:30 a.m. on the nomination of Annette Sandburg to be Administrator of the Federal Motor Carrier Safety Administration in SR–253.

COMMITTEE ON FINANCE

Mr. COLEMAN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open executive session during the session on Thursday, May 8, 2003, at 9:30 a.m., to mark up a substitute for S. 2, the Jobs and Growth Tax Acts of 2003.

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

COMMITTEE ON THE JUDICIARY

Mr. COLEMAN. Mr. President, I ask unanimous on the Judiciary be authorized to meet to conduct a markup on Thursday, May 8, 2003, at 9:30 a.m. in Dirksen Room 226.

I. Nominations: Carolyn B. Kuhl to be U.S. Circuit Judge for the Ninth Circuit; John G. Roberts, Jr., to be U.S. Circuit Judge for the District of Columbia Circuit; David G. Campbell to be U.S. District Judge for the District of Arizona; S. Maurice Hicks, Jr., to be U.S. District Judge for the Western District of Louisiana; William Emil Moschella to be Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice; and David B. Rivkin to be Commissioner for the Foreign Claims Settlement Commission.

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

COMMITTEE ON THE JUDICIARY

Mr. COLEMAN. I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''Department of Justice Nominations'' on Thursday, May 8, 2003, at 2 p.m., in the Dirksen Senate Office Building, Room 226.

Panel I: [Senators].

Panel II: Robert D. McCallum, to be Associate Attorney General, United States Department of Justice; Peter D. Keisler, to be Assistant General, Civil Division, United States Department of Justice.

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

COMMITTEE ON THE JUDICIARY

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, May 8, 2003, at 2:05 p.m., in The President's Room, S 216, The Capitol.

I. Nominations: Carolyn B. Kuhl, to be U.S. Circuit Judge for the Ninth Circuit; John G. Roberts, Jr., to be U.S. Circuit Judge for the District of Columbia Circuit; Consuelo Maria Callahan, to be U.S. Circuit Judge for the Ninth Circuit; Michael Chertoff, to be U.S. Circuit Judge for the Third Circuit; David G. Campbell, to be U.S. District Judge for the District of Arizona; S. Maurice Hicks, Jr., to be U.S. District Judge for the Western District of Louisiana; L. Stott Coogler, to be U.S. District Judge for the Northern District of Alabama; William Emil Moschella, to be Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice; Leonardo M. Rapadas to be U.S. Attorney for the District of Guam.

II Bills: S. 878, a bill to authorize an additional permanent judgeship in the District of Idaho.

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

COMMITTEE ON THE JUDICIARY

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''Department of Justice Nominations'' on Thursday, May 8, 2003, at 3:30 p.m. in the Dirksen Senate Office Building Room 226.

Panel I: The Honorable ZELL MILLER United States Senator [D–GA]; The Honorable SAXBY CHAMBLISS United States Senator [R–GA].

Panel II: Robert D. McCallum to be Associate Attorney General, United States Department of Justice; Peter D. Keisler to be Assistant Attorney General, Civil Division, United States Department of Justice.

The PRESIDING OFFICER. Without objection it is so ordered.

SUBCOMMITTEE ON CLEAN AIR, CLIMATE CHANGE, AND NUCLEAR SAFETY

Mr. COLEMAN. Mr. President, I ask unanimous consent that the Subcommittee on Clean Air, Climate Change, and Nuclear Safety be authorized to meet on Thursday, May 8, 2003 at 9:30 a.m. to conduct a hearing regarding S. 485, the Clear Skies Act.

The meeting will be held in SD 406.

The PRESIDING OFFICER. Without objection it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. FEINGOLD. Mr. President, I ask unanimous consent that Alex Busansky, a detailee with my office from the Department of Justice, be granted floor privileges for the duration of this Congress.

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

UNANIMOUS CONSENT AGREEMENT—RECONCILIATION

Mr. MCCONNELL. Mr. President, I ask unanimous consent that on Monday, at a time to be determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to the Senate reconciliation bill; provided further that no more than 1 hour per side of the statutory time limit be consumed during Monday's session and that no amendments be in order during Monday's session; finally, that this order be vitiated if this bill is not available on Monday.

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

CONDEMNING THE PUNISHMENT OF EXECUTION BY STONING

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 78, S. Con. Res. 26.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 26) condemning the punishment of execution by stoning as a gross violation of human rights, and for other purposes.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the resolution and the preamble be agreed to; that the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to the concurrent resolution be printed in the RECORD.

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

The concurrent resolution (S. Con. Res. 26) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 26

Whereas execution by stoning is an exceptionally cruel form of punishment that violates internationally accepted standards of human rights, including those set forth in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

Whereas women around the world continue to be targeted disproportionately for cruel, discriminatory, and inhuman punishments by governments that refuse to protect equally the rights of all their citizens;

Whereas the brutal sentence of execution by stoning is pronounced in many countries on women who have been accused of adultery, a charge that is brought even against victims of coerced prostitution or rape;

Whereas in some places execution by stoning has been invoked as punishment for ''blasphemy,'' thereby suppressing religious freedom and diversity and stifling political dissent;

Whereas, in July 2002, Amnesty International referred to execution by stoning as ''a method specifically designed to increase the victim's suffering'';

Whereas, in 2002, the European Union, the Secretary General of the Council of Europe, the Government of Australia, the Minister of Foreign Affairs and Trade of New Zealand, the President of Mexico, the Congress of Deputies of Spain, and other world leaders all condemned execution by stoning and called for clemency for individuals sentenced to stoning; and

Whereas, according to the Country Reports on Human Rights Practices of the Department of State, the sentence of execution by stoning continues to be imposed in several countries: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) condemns the practice of execution by stoning as a gross violation of human rights and appeals to the international community to end the practice;

(2) requests the President formally to communicate this resolution to governments that permit this cruel punishment and to urge the termination of execution by stoning; and

(3) requests the President to direct the Secretary of State to work with the international community to promote adherence to international standards of human rights and repeal laws that permit execution by stoning.

AUTHORIZING USE OF THE CAPITOL GROUNDS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 53 and H. Con. Res. 96, en bloc.

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

The clerk will report the concurrent resolutions by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 53) authorizing the use of the Capitol Grounds for the Greater Washington Soap Box Derby.

A concurrent resolution (H. Con. Res. 96) authorizing the use of the Capitol Grounds for the National Peace Officers' Memorial Service.

There being no objection, the Senate proceeded to consider the concurrent resolutions, en bloc.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the concurrent resolutions be agreed to, en bloc, and that the motions to reconsider be laid upon the table, en bloc, with no intervening action or debate.

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

The concurrent resolutions (H. Con. Res. 53 and H. Con. Res. 96) were agreed to, en bloc.

AUTHORIZING PRINTING OF BIOGRAPHICAL DIRECTORY

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 138, which is at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 138) authorizing the printing of the Biographical Directory of the United States Congress, 1774–2005.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table, with no intervening action or debate.

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

The concurrent resolution (H. Con. Res. 138) was agreed to.

REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 134, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 134) to authorize representation by the Senate Legal Counsel in Newdow v. Eagen, et al.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 134) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 134

Whereas, S. Res. 343, 107th Congress, authorizes the Senate Legal Counsel to represent the Secretary of the Senate and the Senate Financial Clerk in the case of *Newdow* v. *Eagen, et al.*, Case No. 1:02CV01704, pending in the United States District Court for the District of Columbia;

Whereas, additional defendants have been named in that case; and

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1), the Senate may direct its counsel to represent officers and employees of the Senate in civil actions with respect to their official responsibilities: Now, therefore, be it

Resolved That the Senate Legal Counsel is authorized to represent all Senate defendants in the case of *Newdow* v. *Eagen, et al.*

HONORING JAMES A. JOHNSON

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 137, submitted earlier today by Senators FRIST, DASCHLE, STEVENS, KENNEDY, and others.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 137) honoring James A. Johnson, Chairman of the Board of Trustees of the John F. Kennedy Center for the Performing Arts.

There being no objection, the Senate proceeded to consider the resolution.

Mrs. FEINSTEIN. Mr. President, I rise today to join my colleagues, Senators FRIST, DASCHLE, STEVENS, and KENNEDY, to cosponsor a resolution honoring a very distinguished American who I am proud to call my very dear friend—Mr. James Johnson.

Minnesota has produced some extraordinary political individuals—Harold Stassen, Hubert Humphrey, Eugene McCarthy and Walter Mondale, among others. But among those who have never sought public office, but are still devoted to public policy and the power of good government, Jim Johnson stands out.

Born in the small town of Benson, Jim Johnson was exposed at an early age to Minnesota politics, where his father, Alfred Ingvald, was a leading figure in the Democratic–Farmer–Labor Party, serving for 2 years as speaker of the Minnesota House.

A natural politician, Jim was elected student body president at the University of Minnesota when only a sophomore, then went to Africa on a grant from the Ford Foundation, and earned a masters degree from Princeton University's Woodrow Wilson School of Government.

After serving on his Senate staff, Jim served as Executive Assistant to Vice President Walter Mondale and served as campaign director of the Vice President's 1984 bid for the White House.

In the private sector, Jim founded Public Strategies, with Richard Holbrooke, and later served as a managing director at Lehman Brothers.

Most notably, he also served as chairman and CEO of Fannie Mae, with the goal of allowing more Americans to fulfill their dreams of home ownership, and then as the chairman of the Kennedy Center.

For the last 7 years, Jim Johnson has done a remarkable job at the center.

During his tenure, Congress approved a $650 million construction project that will include two new buildings and a large plaza, to better connect the center with the rest of the city.

He has made the center more accessible to the public, thanks to the free 6 p.m. performances that are held every day.

And who could forget last year's superb tribute to the America master, Stephen Sondheim?

At the same time, the Kennedy Center Awards have become nationally recognized and broadcast on prime time TV.

Not only has Jim Johnson worked tirelessly on behalf of the Kennedy Center, he has also been one of the center's most generous benefactors.

There is an old story about Jim Johnson, when he and former President Clinton were in their mid 20s and trying to gain their footing in the political arena.

What was very clear to everyone who knew the two of them back then: both had a real shot of becoming President of the United States.

Well, Jim Johnson never took the path of elected office. But he went on to serve our Nation with great distinction, in the public and the private sector, and he still has so much left to give. Wherever he goes and whatever he does, Jim Johnson will surely leave an indelible mark.

His wife Maxine and their son Alfred are immensely proud of this extraordinary man, just as I consider myself so very fortunate to call him my friend.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, en bloc, the motion to reconsider be laid upon the table, that any statements relating thereto be printed in the RECORD, without intervening action or debate.

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

The resolution (S. Res. 137) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 137

Whereas James A. Johnson has served with distinction since 1996 as the Chairman of the Board of Trustees of the John F. Kennedy Center for the Performing Arts, which is the national center for the performing arts;

Whereas under the leadership of Jim Johnson, the Kennedy Center has earned impressive renown, and become one of the finest performing arts institutions in the Nation and around the world;

Whereas Jim Johnson initiated free public performances each evening on the Millennium Stage at the Kennedy Center, and these performances have now included a total of 25,000 performers and reached an audience of 1,500,000 persons since 1997;

Whereas the arts education programs of the Kennedy Center have been significantly expanded under the inspired leadership of Jim Johnson;

Whereas Jim Johnson has launched a major renovation and construction project to improve the physical structure of the Kennedy Center and enrich the experience of all who visit and attend performances; and

Whereas Jim Johnson deserves the thanks of a grateful Nation for his leadership at the Kennedy Center, and in bringing new vitality to the cultural heritage of our Nation: Now, therefore, be it

Resolved, That the Senate—

(1) expresses its appreciation for all that Jim Johnson has accomplished; and

(2) commends Jim Johnson for his extraordinary achievements as Chairman of the John F. Kennedy Center for the Performing Arts.

APPOINTMENTS

The PRESIDING OFFICER. The Chair announces, on behalf of the Democratic Leader, pursuant to the provisions of S. Res. 105, adopted April 13, 1989, as amended by S. Res. 149, adopted October 5, 1993, as amended by Public Law 105–275, further amended by S. Res. 75, adopted March 25, 1999, and S. Res. 383, adopted October 27, 2000, the appointment of the following Senators to serve as members of the Senate National Security Working Group for the 108th Congress: Senator ROBERT C. BYRD of West Virginia (Democratic Administrative Co-Chairman); Senator CARL LEVIN of Michigan (Democratic Co-Chairman); Senator JOSEPH R. BIDEN, JR. of Delaware (Democratic Co-Chairman); Senator EDWARD M. KENNEDY of Massachusetts; Senator PAUL S. SARBANES of Maryland; Senator JOHN F. KERRY of Massachusetts; Senator BYRON L. DORGAN of North Dakota; Senator RICHARD J. DURBIN of Illinois; Senator BILL NELSON of Florida.

The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276d–276g, as amended, appoints the following Senators as members of the Senate Delegation to the Canada-U.S. Interparliamentary Group during the First Session of the 108th Congress, to be held in Canada, May 15–19, 2003: Senator PATRICK J. LEAHY of Vermont; Senator DANIEL K. AKAKA of Hawaii.

ORDERS FOR FRIDAY, MAY 9, 2003

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Friday, May 9. I further ask that following the prayer and the 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 that the majority leader then be recognized to speak in morning business.

Further, I ask unanimous consent that following those remarks, the Senate then resume consideration of S. 14, the energy bill.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Prior to our closing tonight, I want to lay on the record that I think we have had a pretty good week this week. There has been a lot of work done by both sides, and we have accomplished a great deal. Today was an indication of what can be done if we work together.

I know people in the majority feel strongly about Miguel Estrada and Priscilla Owen. I have to say the record this Senate has established regarding the approval of judges is tremendous. Today we approved the 124th judge during the administration of this President Bush. That is pretty good.

I hope those Senators who feel so intently about Priscilla Owen and Miguel Estrada—it is certainly their right to feel so strongly, as people on this side feel strongly regarding opposition of the two judges—also recognize the number of judges that have been approved. We think we have done a good job. In fact, this week I asked my staff how many we approved. I think it was four or five judges even this week. So we are moving right along.

I have no objection to the unanimous consent request of the distinguished majority whip.

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

Mr. MCCONNELL. Mr. President, let me say that the Senator from Nevada is certainly correct. A number of judges have been confirmed. But also this Senate and this Congress will be remembered, apparently—we will see at the end of the Congress—apparently be remembered as the first Senate since 1968 to kill a nomination through the use of the filibuster.

There have been occasional cloture motions over the years, but they have been used to advance the completion of a nomination—not to stop it—with the exception of Fortas in 1968, which was right before a Presidential election. We are not right before a Presidential election. I think this unfortunate precedent that has been set is one that we have had much discussion about on the floor and will be regretted by Senators on both sides of the aisle through the years.

PROGRAM

Mr. MCCONNELL. For the information of all Senators, tomorrow morning the Senate will resume debate on the energy bill. The majority leader will offer an amendment related to ethanol upon going to the bill tomorrow morning. There will be no rollcall votes tomorrow, but I encourage Senators to come to the floor to debate the amendment.

Next week, on Monday, the Senate will take up the reconciliation bill. No rollcall votes will occur on Monday. However, Members are encouraged to make their opening statements during that day. The majority leader would like to remind all Senators that next week is expected to be a busy legislative week, and Members should schedule themselves accordingly. The next rollcall vote will occur on Tuesday, and Members will be notified when that vote is scheduled.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. MCCONNELL. If there is no further business to come before the Senate, I ask the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:57 p.m., adjourned until Friday, May 9, 2003, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate May 8, 2003:

THE JUDICIARY

MICHAEL W. MOSMAN, OF OREGON, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF OREGON, VICE ROBERT E. JONES, RETIRED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. BRUCE E. BURDA, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. ANTHONY R. JONES, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

BRADFORD E. ABLESON, 0000
ROBERT P. BELTRAM, 0000
LEWIS E. BROWN, 0000
ROBERT D. CROSSAN, 0000
STEPHEN T. GRAGG, 0000
GERALD L. GRAY, 0000
JOHNNY W. P. POOLE, 0000
RICHARD A. PUSATERI, 0000
GEORGE A. RIDGEWAY, 0000
OLRIC R. WILKINS, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

CHRISTOPHER A. BARNES, 0000
PAUL B. BECKER, 0000
PAUL F. BURKEY, 0000
ROBERT S. EWIGLEBEN, 0000
THOMAS B. LUKASZEWICZ, 0000
ERNEST B. MARKHAM, 0000
ROBERT P. MARSTON, 0000
MAUREEN A. NEVILLE, 0000
RONALD G. RICE, 0000
SCOTT M. STANLEY, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

THOMAS M. BALESTRIERI, 0000
BRENDA G. BARTLEY, 0000
ANN BOBECK, 0000
CHARLES H. BRAKHAGE, 0000
THOMAS J. CHOHANY, 0000
ALBERT M. CHURILLA, 0000
SALLY E. COOK, 0000
FLORENCE M. CROSBY, 0000
RONALD A. DEIKE, 0000
CHRISTINE R. DIMARCO, 0000
GREGORY P. ERNST, 0000
RAYNARD K. S. FONG, 0000
CHARLES R. HARRIS, 0000
GREGORY A. HARRIS, 0000
NANCY G. HIGHT, 0000
PHILIP M. HOLMES, 0000
GREGORY M. HUET, 0000
RONALD D. LUKA, 0000
JAMES W. MITCHELL, 0000
TERRY J. MOULTON, 0000
TYRONE D. NAQUIN, 0000
DEBORAH E. NELSON, 0000
DAVID F. NERI, 0000
JAMES P. NORTON, 0000
ELIZABETH A. PEAKE, 0000
DONALD R. PLOMBON, 0000
JOHN R. POMERVILLE, 0000
JOHN R. RUMBAUGH, 0000
ALAN J. RUPRECHT JR., 0000
MARTHA M. SLAUGHTER, 0000
ANTOINETTE A. WHITMEYER, 0000
ROBERT S. WRIGHT, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

LISA L. ARNOLD, 0000
JUANITA BUDA, 0000
DONNA L. CAIN, 0000
LORI A. CARLSON, 0000
MARY W. CHAFFEE, 0000
MIN S. CHUNGPARK, 0000
BRIAN S. DAWSON, 0000
RONALD G. FORBUS, 0000
JAMES R. FRALEY, 0000
MARY I. GREENWOOD, 0000
MARTHA J. HANSEN, 0000
KEVIN W. HAWS, 0000
SUSAN E. HERRON, 0000
JOHN W. LARUE, 0000
MARCIA K. LYONS, 0000
RICK A. MADISON, 0000
SARA M. MARKS, 0000
COLLEEN O. MCLARNON, 0000
SHAUNEEN M. MIRANDA, 0000
WILLIAM T. MOCK, 0000
DAVID NORMAN, 0000
WANDA C. RICHARDS, 0000
SANDRA K. SAUNDERS, 0000
ELIZABETH C. SAVAGE, 0000
SUSAN M. SCOTT, 0000
TOMMY C. STEWART, 0000
DIANE M. STRENN, 0000
LYNDA E. WALTERS, 0000
RICHARD J. WESTPHAL, 0000
PEGGY W. WILLIAMS, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

SCOTT W. BAILEY, 0000
LAWRENCE R. BROWN, 0000
DAVID W. BRUMFIELD, 0000
ROBERT K. CARTER, 0000
MICHAEL F. CORNING, 0000
PETER E. DAHL, 0000
JAMES D. DAVIS, 0000
BERNARD D. DUNN, 0000
MICHAEL K. FABISH, 0000
VINCENT L. GRIFFITH, 0000
PARKE L. GUTHNER, 0000
CLAUDE R. HUSSON III, 0000
BRUCE N. LEMLER, 0000
GLENN C. ROBILLARD, 0000
MICHAEL W. ROBINSON, 0000
DOUGLAS H. ROSE, 0000
EMIL E. SPILLMAN, 0000
FRANCIS X. TISAK, 0000
CYNTHIA R. VARNER, 0000
RAYMOND A. WALKER, 0000
SAMUEL N. WALKER, 0000
KEVIN R. WHEELOCK, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

MATTHEW R. BEEBE, 0000
MICHAEL S. BOWERS, 0000
DAVID R. COZIER, 0000
THOMAS M. CUNNINGHAM, 0000
ANTHONY V. ERMOVICK, 0000
WILLIAM G. GRIP, 0000
CHRISTOPHER J. HONKOMP, 0000
PETER B. MELIN, 0000
DOUGLAS G. MORTON, 0000
THOMAS C. NICHOLAS, 0000
KELLY J. SCHMADER, 0000
RALPH G. SNOW, 0000
PAUL A. SOARES, 0000
JAMES F. STADER, 0000
STEVEN M. WIRSCHING, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

EVAN A. APPLEQUIST, 0000
WAYNE S. BARKER, 0000
CHRISTOPHER J. COBB, 0000
JOHN A. DAY JR., 0000
DIANE L. DOYLE, 0000
STEVEN C. FISHER, 0000
GERALD T. GRANT, 0000
MILTON J. GRISHAM JR., 0000
BENJAMIN D. HUNTER II, 0000
STEPHEN IANNAZZO, 0000
RONALD L. JEFFREY, 0000
KATHLEEN S. KENNY, 0000
BARTON H. KNOX, 0000
MARTIN J. KOOP, 0000
MICHAEL T. LEWIS, 0000
DONAL C. MCGONEGAL, 0000
MATTHEW A. MCNALLY, 0000
VLASTA M. MIKSCH, 0000
MICHAEL F. MILOS, 0000
HARVEY D. MOSS, 0000
GLENN A. MUNRO III, 0000
MARY E. NEILL, 0000
JOSEPH V. OLSZOWKA, 0000
NATHAN R. PATTERSON, 0000
TIMOTHY M. RYBA, 0000
PAUL C. SHICK, 0000
STEVEN L. SIDOFF, 0000
JAMES M. SOLOMON, 0000
JAMES M. STROTHER, 0000
FRANK R. TRAFICANTE JR., 0000
DOUGLAS J. S. TRENOR, 0000
KEVIN L. WEBER, 0000
DAVID K. WHITE, 0000
DONALD A. WORM JR., 0000
RICHARD D. WRIGHT, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

WILLIAM B. ADAMS, 0000
CHRISTOPHER L. AMLING, 0000
BRUCE C. BAKER, 0000
DONALD R. BENNETT, 0000
JIMMY D. BOWEN, 0000
ROBERT W. BRINSKO, 0000
ROBERT BUCKLEY, 0000
TERESA M. BUESCHER, 0000
ROBERT F. BUTLER, 0000
JOHN M. CHANDLER, 0000
ROBERT J. CHASTANET, 0000
WILLIAM B. COGAR, 0000
JOSE C. DE LA PENA, 0000
ELLEN C. DENIGRIS, 0000
RICHARD DOHODA, 0000
TERRANCE K. EGLAND, 0000
PAUL H. EPHRON, 0000
FREDERICK O. FOOTE, 0000
DANIEL E. FREDERICK, 0000
ROBERT A. FRICK, 0000
JAMES F. GALLAGHER, 0000
BRUCE L. GILLINGHAM, 0000
ROBERT B. GILLIS, 0000
KEVIN L. GREASON, 0000
GUERARD P. GRICE, 0000
TAMARA M. GRIGSBY, 0000
JOHN P. GROSSMITH, 0000
FRED R. GUYER, 0000
CHARLES HAMES, 0000
AMY P. HAUCK, 0000
ROBERT B. HEATON, 0000
ANITA H. HICKEY, 0000
TIMOTHY S. HINMAN, 0000
WILLIAM J. HOCTER, 0000
JOHN R. HOLMAN, 0000
KERRY E. HUNT, 0000
WAYNE S. INMAN, 0000
KENNETH J. IVERSON, 0000
RALPH C. JONES, 0000
PAUL C. KELLEHER, 0000
DOUGLAS P. KEMPF, 0000
DAVID F. KLINK, 0000
CHRISTOPHER J. KOWALSKY, 0000
JEFFREY C. KUHLMAN, 0000
DAVID H. LASSETER, 0000
LARRY R. LAUFER, 0000
BRUCE R. LAVERTY, 0000
KEVIN G. MAHAFFEY, 0000
MICHAEL H. MAHER, 0000
LEE R. MANDEL, 0000
ROBERT B. MASON II, 0000
MARGARET MCKEATHERN, 0000
JAMES R. MILLER, 0000
TIMOTHY S. MOLOGNE, 0000
KEVIN D. MOORE, 0000
AMY I. MORTENSEN, 0000
ASA MORTON, 0000
GARY L. MUNN, 0000
GEORGE MURRELL, 0000
NEAL A. NAITO, 0000
DONALD L. NICHOLS, 0000
STEPHEN R. OCONNELL, 0000
ANTHONY S. PANETTIERE, 0000
ROBERT K. PARKINSON, 0000
WILLIAM B. POSS, 0000
MICHAEL L. PUCKETT, 0000
PETER M. RHEE, 0000
WILLIAM O. ROGERS, 0000
RICHARD ROWE, 0000
KENNETH W. SAPP, 0000
PAUL J. SAVAGE, 0000
DAVID F. SITLER, 0000
JAY C. SOURBEER, 0000
FREDRICK N. SOUTHERN, 0000
DENNIS E. SUMMERS, 0000
DAVID A. TAM, 0000
SYBIL A. TASKER, 0000
GRETCHEN C. TAYLOR, 0000
HARRY A. TAYLOR III, 0000
ROBERT P. THIEL, 0000
ELIZABETH A. TONON, 0000
RAYMOND J. TURK, 0000
ROBERT M. WAH, 0000
JOHN T. WIDERGREN, 0000
PETER L. ZAMFIRESCU, 0000
DANIEL J. ZINDER, 0000

CONFIRMATION

Executive nomination confirmed by the Senate May 8, 2003:

THE JUDICIARY

JOHN G. ROBERTS, JR., OF MARYLAND, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT.