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## Senate

The Senate met at 10 a.m. and was called to order by the President pro tempore [Mr. STEVENS].

### PRAYER

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

Let us pray.

Everlasting God, our light and our salvation, You are our strength and shield. We thank You for Your great and precious promises. You have promised to supply our needs and to lead us toward abundant living. Thank You also for the promise of Your eternal presence.

Lord, forgive us when we surrender to those influences that draw us downward. Bless the Members of this body. Teach them that Your hand is on the helm of human affairs and that You still guide Your world. Bless our military people who daily risk their lives for liberty. Console those who grieve, who count the empty places and long for the sound of a voice that is still. Lord, renew our strength and give us the courage to carry on. We pray this in Your strong name. Amen.

### PLEDGE OF ALLEGIANCE

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

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

### RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will resume consideration of the conference report to accompany H.R. 2673, the Omnibus appropriations bill. A number of Senators

will want to speak on that measure over the course of today, as well, I am sure, to make comments on the President's State of the Union Address last evening. The time until 6 p.m. today will be equally divided for debate to accommodate those statements.

Although yesterday we were unable to invoke cloture, I do hope we will be able to finish this important funding legislation prior to finishing our business for the week. I will continue to be in discussions with the Democratic leader with the hope of reaching consent to allow the Senate to work its will on the Omnibus conference report.

### RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The minority leader is recognized.

Mr. DASCHLE. Mr. President, I look forward to having further discussions with the majority leader with regard to taking the next legislative step with regard to the Omnibus bill. I am sure we will be able to reach some understanding as to how we might complete our work on this legislation.

I do think it is important, as we said yesterday, for the Senate to focus its attention on some of the issues we cited yesterday as real policy concerns. There were procedural concerns about how we got here, but the policy concerns are the ones that can be addressed and can be fixed. If we are not able to fix them in this legislation, I certainly want to assure my colleagues we will look for other vehicles and other ways to address each of these issues over the course of the next several weeks and months.

I will have more to say about that later in the day, but I will certainly work with our majority leader in addressing the schedule and providing options for ways in which we can complete our work on this bill perhaps this week.

I urge colleagues to recognize the opportunity the day presents to discuss

some of these issues. I know there are many on our side who intend to do that. The time is equally divided. We certainly intend to use the time that will be allocated to this side throughout the day to discuss many of these issues.

I yield the floor.

Mr. REID. Mr. President, while the two leaders are here—I have not had an opportunity to discuss this with either of them—floor staff has indicated when the majority leader finishes his statement Senator DORGAN is here wishing to speak. Following that, Senator REED of Rhode Island would like to speak, and then Senator BOXER. We understand if there are Republicans, we will alternate, but I wanted to give them the roll of those who indicated they would like to come prior to Senator BYRD and Senator MCCAIN speaking this afternoon.

Mr. FRIST. Mr. President, we can talk during the speeches, but my understanding is we will alternate back and forth.

Mr. DASCHLE. Yes.

Mr. FRIST. I will make a stronger statement probably for 30 minutes, and after that we can alternate back and forth.

### APPOINTMENTS

The PRESIDENT pro tempore. The Chair announces the following appointment made on January 6, 2004, during the sine die adjournment:

Pursuant to the provisions of Public Law 108-136, on behalf of the Democratic Leader, the appointment of the following individuals to serve as members of the Veterans' Disability Benefits Commission: Mike O'Callaghan, of Nevada, and Rick Surratt, of Virginia.

### RECOGNIZING 2004 AS THE "50TH ANNIVERSARY OF ROCK 'N' ROLL"

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate

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



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now proceed to consideration of S. Res. 285, submitted earlier today.

The PRESIDENT pro tempore. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 284) recognizing 2004 as the "50th Anniversary of Rock 'n' Roll."

There being no objection, the Senate proceeded to consider the resolution.

Mr. ALEXANDER. Mr. President, I rise today in support of the resolution commemorating the 50-year history of rock 'n' roll. Senator FRIST, the sponsor of this resolution, and myself are both from the State where rock 'n' roll was born—Tennessee. On July 5, 1954, Elvis Presley recorded his first record, "That's All Right," at the legendary Sun Studio in Memphis and rock 'n' roll was officially born.

Memphis being the birthplace of rock 'n' roll should be of no surprise, since rock 'n' roll isn't the first genre of music to be officially born there. During the Civil War era another musical tradition was born from the sons and daughters who followed freedom up the Mississippi River. The soul-wrenching folk melodies of black Southerners laid the foundation for what would become the blues. Memphis has a vast history of being the center of American musical innovation.

The heart of this music innovation is grounded in the cultural life of Beale Street. It was Beale Street where W.C. Handy, a wandering black musician and composer, was the first to put down on paper the sometimes grim but always hopeful fix of field hollers, gospel songs, cotton-baling calls, and African tribal songs. Forty years later, Beale Street and those same rhythms infected a young, aspiring musician named Elvis Aaron Presley. Elvis Presley came to Sun Records to make a record for his mother and ended up forever changing music and society.

Sun Studios is the place where Sam Phillips created his Rockabilly dynasty with Carl Perkins, B.B. King, Roy Orbison, Johnny Cash, Jerry Lee Lewis and Elvis. Rock 'n' roll evolved in the 1950s from rhythm and blues, and was characterized by the use of electric guitars, a strong rhythm with an accent on the offbeat, and youth-oriented lyrics. Last July, Senator FRIST and I joined Secretary of the Interior Gale Norton in a singing ceremony, which designated Sun Records recording studio as a National Historic Landmark. Sun Records in Memphis, TN, is the true home of the blues and the birthplace of rock 'n' roll.

No other city in the United States can claim equal influence on the music of this Nation.

Mr. FRIST. Mr. President, 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 the bill be printed in the RECORD.

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

The resolution (S. Res. 285) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

#### S. RES. 285

Whereas Elvis Presley recorded "That's All Right" at Sam Phillips' Sun Records in Memphis, Tennessee, on July 5, 1954;

Whereas Elvis' recording of "That's All Right", with Bill Black on bass and Scotty Moore on guitar, paved the way for such subsequent Sun Studio hits as Carl Perkins' "Blue Suede Shoes" (1955), Roy Orbison's "Ooby Dooby" (1956), and Jerry Lee Lewis' "Whole Lotta Shakin'" (1957)—catapulting Sun Studio to the forefront of a musical revolution;

Whereas the recording in Memphis of the first rock 'n' roll song came to define an era and forever change popular music;

Whereas the birth of rock 'n' roll was the convergence of the diverse cultures and musical styles of the United States, blending the blues with country, gospel, jazz, and soul music;

Whereas the year 2004 provides an appropriate opportunity for our nation to celebrate the birth of rock 'n' roll, and the many streams of music that converged in Memphis to create a truly American sound known throughout the world: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes 2004 as the 50th Anniversary of rock 'n' roll;

(2) commemorates Sun Studio for recording the first rock 'n' roll record, "That's All Right"; and

(3) expresses appreciation to Memphis for its contributions to America's music heritage.

Mr. FRIST. Mr. President, the resolution just agreed to is a resolution recognizing the year 2004 as the "50th Anniversary of Rock 'n' Roll." Indeed, it was 50 years ago in a small recording studio in Memphis, TN, that a young Elvis Presley recorded his first record. It was called "That's All Right." And at that point, rock 'n' roll was born. That recording by legendary producer Sam Phillips at the now famous Sun Studio in Memphis paved the way for such subsequent hits which titles we all know: Carl Perkins' "Blue Suede Shoes" in 1955, Roy Orbison's "Ooby Dooby" in 1956, and Jerry Lee Lewis' "Whole Lotta Shakin'" in 1957. These early hits catapulted Sun Studio and Memphis to the forefront of that musical revolution.

Throughout the 1950s, the unique sound, tremendous vision, and incredible talent coming out of Memphis, TN, with such artists as Elvis Presley, the "King of Rock 'n' Roll," B. B. King, Johnny Cash, Jerry Lee Lewis, and Carl Perkins, just to name a few, became the hallmark of that Sun Studio and later the hallmark of American rock 'n' roll music.

Indeed, some of the most meaningful contributions to American music were made at that Sun Studio. It is where our country, in many ways, came together and spoke with a new, a uniquely American voice that was and still is heard around the world.

The fact that rock 'n' roll was born in Memphis is no coincidence. That city's location on the banks of the Mis-

issippi River made it a place where the diverse cultures and musical styles of our Nation came together, where they converged, blending the blues with country and with gospel and with jazz. That merging of cultures and styles continues today.

The year 2004 provides the opportunity for our Nation to celebrate the birth of rock 'n' roll and those many streams of music that converged in Memphis to create a truly American sound known throughout the world.

#### PRESIDENT'S ADDRESS TO CONGRESS

Mr. FRIST. Mr. President, at this juncture, on this second day of the new session of the 108th Congress, I will spend a few moments reviewing a bit but also looking ahead, setting the stage for what we are likely to expect in this body.

Last night, the President of the United States delivered a powerful challenge to the U.S. Congress and to the American people. He told us the state of the Union is strong and confident. The substance of the talk last night reflected just that.

There is much to celebrate as we enter this second session of the 108th Congress. Perhaps most important is the capture of Saddam Hussein. It was only 1 month ago that the world woke up to those astonishing images—the President described it last night—of Saddam Hussein in a hole and now in a cell. They were images of that dirty and dishevelled dictator emerging out of that spider hole.

Our brave and resourceful soldiers caught the "butcher of Baghdad." As the President said last night, Saddam Hussein now is in a cell, a military prison, awaiting his fate. He will be brought to justice by the Iraqi people whom he so mercilessly terrorized, and he will be judged as the entire world looks on.

Today, because of the war on terror, the capture of Saddam, the death of his two sons, and the destruction of his wicked regime, America and her allies are safer and more secure. As we enter the new year, we are also stronger. America's vibrant economy is beginning once again to hum. The Federal Reserve confirms that the recovery we began to observe last fall is gaining momentum each and every day. Worker production is up. Industrial production is up. Exports are on the rise. Home construction is booming. More Americans than ever own their own homes. Their total household wealth is approaching historic highs. Businesses are investing. Manufacturing is at its highest level in 20 years. In short, those tax cuts, those jobs and growth packages are working.

The first round of tax cuts indeed helped end that recession that began in the year 2000. The second round of tax cuts put America on a path to solid growth. Americans today have more money to save, invest, and spend as

they, as individuals, choose. Business owners have more opportunities today to realize their entrepreneurial spirit and potential. America is moving forward because President George Bush and the Republican-led Congress believed in that creativity, in that ingenuity, in that common sense of individuals, the American people. The risk-taking, willingness to invest, irrepressible optimism of the American people is in truth what has turned this economy around from recession to where today we are in the midst of the fastest growing economy in not just the last 5 years, 10 years, or 15 years but the fastest growing economy in this country in the last 20 years, since 1984.

As the President pointed out last night, now is not the time to rest. We cannot really rest until that economic recovery is complete. Every American who is looking for work should be able to get a job and should be able to get that work. Thus, we have to have smart pro growth fiscal policy to lead this country to job creation.

Looking to the future—and our obligation is to look to the future—there are critical structural problems that we in this body need to take head on, not to shy away from but to go right after, to tackle head on.

The one area that is critical to job growth—the President mentioned it last night—is tort reform. Over the last decade, class action lawsuits have exploded. State court class action filings have skyrocketed by over 1,300 percent in just the last 10 years. It is really not just the statistic, not just the figure, but it is the result. The result of this glut of claims is to clog our court system, our State courts. They simply cannot handle them all. It is inefficient in terms of government. It wastes taxpayer dollars. It stifles the innovation to which I just referred. That innovation and that entrepreneurship that is so crucial to taking a growing economy and translating it into job growth is stifled, is shackled, is handcuffed by this glut of claims.

Last night the President also mentioned medical liability, another aspect of tort reform. The President said “frivolous lawsuits,” and it was wonderful for me to see the Members of Congress stand up, but now we need to act. We cannot just talk about it; we need to act. Those frivolous lawsuits are exploding health insurance premiums. So when we are talking about the 44 million people uninsured, and we are talking about the cost of insurance and frivolous lawsuits are driving those premiums sky high out of the reach of hard-working men and women, we must respond. We must address it directly.

I encourage my colleagues to talk to their own doctors and ask them what the impact of this exploding malpractice, medical liability is doing to their own practice, how it affects the quality of care. I was just in a town meeting 3 days ago with physicians. I just come straight in. Being a physi-

cian I can sort of cut through a lot of the conversation. I said: What is the biggest problem today in terms of the quality of care that you give that patient coming into the room?

It was pretty amazing. That group of physicians, without any hesitation, just one after another, said medical liability, medical malpractice premiums; I cannot afford it; it affects quality; it affects access; it affects the way I practice medicine in a negative way.

Being a doctor, I receive letters about this problem from doctors all over America. It is real. The problem is increasing, and thus we in this body must respond to it. It is driving doctors out of the practice of medicine. When babies are being delivered, in some States the tax on that baby is as much as \$1,000 the mom or family has to pay, somebody has to pay, at the end of the day. That \$1,000, being a tax, goes to medical liability service. It hurts access to care. It hurts the quality of care. It is threatening our health care system. It is costing the country billions of dollars.

As a physician, I am concerned about the care and the quality end of it, but even though the numbers are hard to calculate, if we just stand back and look in the aggregate, it is expensive. Well-researched reports predict that if we reform the medical liability system, make sure that there is equity, fairness, and appropriate compensation, if we have appropriate reform, we will save the economy anywhere from \$70 to \$126 billion a year. Just the Federal Government would save about \$14.9 billion over 10 years through savings just in the Medicare and the Medicaid programs.

So when we are talking about what is the biggest issue in health care today, clearly this issue of the uninsured and the cost of health care must be put on the forefront.

Staying with this whole area of tort liability, I very much would like to address the issue of asbestos litigation. Right now things are out of control. A very good law has run amok over time and the intended consequences no longer are being accomplished, but they are unintended consequences which are hurting America.

The torrent of asbestos litigation has wreaked havoc on the victims of asbestos. Many of them develop either cancer or a type of cancer called mesothelioma. It has wreaked havoc on Americans' jobs. Companies are going bankrupt. About 20 companies have gone bankrupt from the cost of this out-of-control asbestos litigation system over the last 2 years. And it is wreaking havoc on the economy. The approximately 600,000 claims that have been filed already have cost \$54 billion in settlements, judgments, and litigation costs.

The sad thing is that even with all of these billions of dollars that are being spent in the system, the current asbestos tort system has become nothing more than a litigation lottery. A few

victims receive adequate compensation. But far more, far more today, the way the system is constructed, the way it has evolved, suffer long delays for unpredictable awards, for inequitable awards—if they receive anything at all. This is the victims, the people who have been hurt by asbestos.

It is a system where, if you look at it, there is only one real winner. It is not who was intended to win in the initial legislation or the laws or the regulations; that is, the victim or potential victim of exposure to asbestos. No, the only one real winner today is the plaintiffs' trial lawyers, the only certain winner. They are taking about half of every dollar that is awarded to victims. So you have a victim, you have a system with a lot of money going to it, but only 50 percent of it ends up going to the victim. The other 50 percent gets lost in the system. There can be a system where there is fair and adequate compensation both for the lawyers and especially for the victims.

While the attorneys collected their fees, the asbestos-related bankruptcies have already cost about 60,000 Americans their jobs. These job losses are unnecessary. If we act and update and modernize the asbestos tort system and bring everybody to the table, and do it in a bipartisan way, we can stop this unnecessary job loss—60,000 jobs to date. For those who lose their jobs, the average personal loss in wages over a career is as much as \$50,000. That is in wages. That doesn't even include the losses in health benefits as well as in lost retirement.

Remember, when I say 20 companies in the last 2 years have gone bankrupt, these are big companies, big employers. About 60 companies have gone bankrupt over the last two decades because of the asbestos-related matters.

So passing this asbestos reform will create enormous economic benefits. It will benefit the victims themselves. The certainty that flows from the bill itself will also stimulate capital investment which will go to preserve existing jobs and create new jobs. Again, I mention a bipartisan spirit. We have to have everybody at the table. We began the work in the last session. I would like to finish it in this session in a bipartisan spirit to accomplish this reform.

In early February we will be turning to the highway system. It will be shortly—February 2, hopefully, somewhere, depending upon when we finish the appropriations bills, which I hope we will finish this week—that we can turn to America's highways. It is another jobs issue. It is also an infrastructure issue. It is a safety issue. It is an issue we will address in this body. It is estimated the highway bill, from a jobs perspective, will help create as many as 2 million much needed jobs, and it is easy to understand why.

We are blessed in many ways because this country is interlaced with 4 million miles of roads and highways. Our

transportation infrastructure is estimated to be worth about \$1.75 trillion. We are blessed in many ways.

It is interesting that every \$1 billion we invest in transportation infrastructure turns around and generates, for every \$1 billion investment, \$2 billion in economic activity. That, of course, translates into jobs.

Our roads, our ports, our railroads are that infrastructure, that transportation infrastructure that is fundamental to our Nation's economic success. If things are so good, we are so blessed, why do we have to have a highway bill? Because if we look at that infrastructure, we see much of it is deteriorating or is becoming painfully crowded. Probably people listening to me now over their radios as I am talking are sitting in line in their cars. Commutes that used to take 10 minutes now take 20 minutes or that used to take 30 minutes now take an hour. Some people are probably sitting in bumper-to-bumper traffic as I speak, not during just rush hour but throughout the day.

From a safety standpoint—I have to put it on the table because it is another reason we have to address this highway bill early—we have more accidents.

There is less time to spend with families as you spend more time in the car. There will be about 23.6 billion hours spent by Americans in delays, it is estimated. Americans waste 5.7 billion gallons of fuel just sitting in traffic in these delays. We can't ask our fellow citizens to join the great American workforce and then simply sit idly by and allow our roads to decay as that daily commute stretches from a few minutes to 30 minutes to 60 minutes—indeed, to hours.

It is a jobs issue. It is a quality of life issue. It is a safety issue.

Last year we addressed similar types of issues. We addressed the issue of spam with legislation, the Do Not Call phone registry. We just hit the issue of spam head on. This year we need to upgrade our transportation system. We are losing billions of dollars in lost productivity and billions of hours stuck in traffic.

It is that image of being stuck in traffic that kind of moves me to a topic that is unfinished business, that we worked hard on but we were unsuccessful with in the last session. It is an issue that affects every single American, every one of my colleagues, every one of my colleagues' families, everybody listening to me, their families—and that is energy. Our Nation simply does not have a comprehensive energy policy that addresses the unfortunate dependence on foreign sources of oil and energy today, a dependence which is increasing. It used to be 30 percent, 40 percent, 50 percent. Now it is up to 60 percent dependence on oil from overseas—an energy plan.

A lot of this reminds me to at least comment on what happened last summer. Fifty million people suffered the

biggest blackout in American history. It came at an instant from New York City to Cleveland to Detroit to Toronto; tens of thousands of citizens were trapped at that instant, trapped in elevators and subways, trapped in trains, and they were stranded on dark city streets. We saw just with a sort of snap of the fingers in that instant the potentially fatal consequences of operating on a grid, upon which we are all so dependent, that is outmoded, that is outdated, that can crash at any time.

The Senate must respond. Our Congress must respond. It is our responsibility to respond, to act—not just talk, not just try, but to respond and pass legislation that addresses in a comprehensive way energy supply and conservation and renewable resources and the uses of more efficient types of energy.

We have to address what people are beginning to feel in the last several weeks, especially with the cold wave and the cold streak that has hit New England in historic proportions, and that is the cost of energy and the cost of oil and natural gas. U.S. chemical companies are closing plants. They are laying off workers. They are looking to expand production abroad. All because of what? The cost of high energy prices. We will import approximately \$9 billion more in chemicals than we exported this year. American consumers are getting hit with higher and higher energy prices.

Small businesses are struggling just to contain these rising energy costs. It is our responsibility, this body, the Senate, to act. We acted in the last Congress. We came two votes short. Now it is incumbent upon us to go back and address that challenge before us.

I should add, not only will the energy plan lower prices, it, too, will have a real impact on jobs and on the economy—on thousands of jobs. It is estimated that the energy package will create about a half a million jobs. The Alaskan pipeline alone will create at least 400,000 jobs.

Hundreds of millions of dollars will be invested in research and development and new technology. All of this will create jobs. Engineering will create jobs in math, chemistry, physics, and science. Reforming the litigation system, upgrading our highways, and passing a comprehensive energy plan will lead to more jobs and higher economic growth.

We also must think beyond our borders in relation to what happens within this country, what happens within other countries, and address the energy issue of trade—specifically trade with Central America and Australia. Free trade is essential to the creation of jobs and to growing the economy.

Two weeks ago, I had the opportunity to spend 2 days in Mexico City where I met with representatives from the senate there. I had the opportunity to look back over the last 10 years of NAFTA. Indeed, under those 10 years of much freer trade with Mexico, the

value of two-way trade between the United States and Mexico tripled. It went up three times—from \$81 billion to over \$230 billion. While I was there, I was talking to my legislative counterparts in the senate. And I was talking to President Fox. It was apparent to me that free trade does much for growth and economic opportunity.

But it also does much more than that. They described to me how elections there have become much freer and much more open at the state level and at the national level. We also need to make sure those trade agreements that we are part of are fair and equitable—that they strengthen the rules of international trade, and we will work hard in this body to achieve that right mix of benefits and obligations.

In addition to these types of structural reforms, we will continue to pursue strong fiscal policy and deficit reduction.

Again, the President mentioned last night the importance of this fiscal responsibility. In about 2 weeks, the President of the United States will deliver a budget to this body. We will work with that budget to accomplish that fiscal discipline. The President last night laid out a plan to cut the deficit in half over the next 5 years.

Now that the economy is beginning to hum once again, thanks to the tax relief package and the jobs and growth package of the President from 2001 and 2003, we must turn our attention to reducing the deficit. The deficit depends in part on revenues and in part on how much we spend. To grow those revenues, we have to focus like a laser, which the President has done and which we in this body have done growing the economy. Now is the time to focus on that spending.

We are also committed to promoting fairness in the Tax Code. Last summer we passed a tax bill to provide additional tax relief for families with children. We created a uniform definition of a child. Instead of five confusing and conflicting categories in terms of defining a child, the Tax Code was simplified to make it easier for folks to fill out the forms and get the tax relief to which they are entitled.

Tax simplification: We will not solve all of it this year, but I pledge this body—working with the appropriate committees—to work along the line for tax simplification. We will continue to pursue reforms that make the Tax Code clearer, more understandable, and less burdensome for America's tax filers. We will address the issue of Internet tax, for example. We will work hard to pass manufacturing tax incentives.

Each of these will reduce the burden that the Government imposes on American workers and on American businesses. They, too, are critical to adding jobs to the economy. Reducing taxes on manufacturing profits especially will increase the competitiveness of American businesses by creating a fairer and a more sound system of taxing income. We will work hard this year to lower

manufacturing taxes and streamline the Tax Code; all of that as we focus on taxes because taxes ultimately is not about dollars but about people—people who go to work every day, who start businesses, who hire new workers, who contribute to their communities, who raise their families, and who expand the economy.

Tax relief and tax reform grow the range of opportunities for people to make the very best choices for themselves and for their families, whether that is to spend their hard-earned dollars on a dishwasher or whether it might be to take the family on a vacation.

For some families, however, the choices are stark. They are not thinking about even a new dishwasher. They are not thinking about a vacation. They struggle just to pay the bills. Often health insurance for their loved ones is a necessity they do without.

The President last night mentioned the importance of addressing the cost of health care today. Forty-four million people are uninsured in this country. It varies between 40 million and 44 million. Whatever the figure is, it is too high. The primary cause is the cost of health insurance. It is one of the most daunting policy challenges facing our Nation.

As a physician, it is clear to me that if somebody does not have health insurance they simply don't get good care or high-quality care. They do not tend to get things that are important in preventing diseases such as preventive services. The uninsured are four times less likely to receive needed medical and health treatment. The uninsured are five times less likely to obtain prescription drugs. The uninsured are four times more likely to enter the health care system through the emergency room.

The lack of affordable health care coverage is also one of the key factors accounting for the health care disparities among minorities—addressing specifically access to quality care.

As we heard last night, the President offered specific proposals. He didn't just say we need to address the problem by saying we are going to take care of everybody no matter what it costs and sort of stick one's head in the sand about the issue or overpromise. The President offered very specific proposals which we in this body should consider.

Refundable tax credits for low- and middle-income Americans are important. It means that people who are on the margin and can't afford health care insurance all of a sudden have a pool of resources to be able to buy that insurance.

He proposed to expand the number of community health centers and to increase access to this new entity of health savings accounts where you, in essence, own your health savings account. You are able to put in money tax free and take it out tax free. You control that health care dollar.

He introduced the concept last night of making the premiums deductible, to encourage and to make it more affordable to have these health savings accounts.

We have to control costs through, as I mentioned earlier, addressing head on the frivolous and unnecessary medical lawsuits.

The President mentioned promoting association health plans—again, a specific proposal. It will be debated on the floor of the Senate.

But the point is the President says we need to reduce the cost of the health insurance policies. He feels very strongly that one of the answers would be lowering the cost by allowing association health plans to enter the market and to compete.

In this body, I have asked Senator JUDD GREGG to lead a Senate Republican task force to explore ways in which this body can respond to the uninsured—this daunting challenge which is before us.

America is a strong nation. America is a compassionate nation. We are committed to protecting the most vulnerable before us. The President last night mentioned immigration policy. The reception to his immigration policy statements from a few weeks ago has been very mixed. We know that. A lot of people are getting phone calls from constituents. But the point is the President says this is a problem, and the reality is we have 8 million people or 9 million people in this country who are in the shadows. We don't know who they are or where they are or what they are doing. Our immigration policy is outdated. It must be addressed.

Indeed, in this body we must address immigration policy. I have asked my chairmen of the appropriate committees to come together and see what the appropriate response is in discussing, pulling together and addressing what the immigration policy might be and to report back.

It was feared that the President's plan was either amnesty or welfare. But the President was very direct last night. This year we will work to find ways to improve the system.

In 2004, we will also work to build on the success of the No Child Left Behind Act and the education bill. We are committed to improving Head Start and making sure that every child in America learns.

We will also address the Individuals with Disabilities Education Act in this session, and to get education out of the courtroom and into the classroom focusing on the individual—to focus on individuals themselves who have disabilities and to make sure they have that opportunity to learn. We will examine how we can expand access to higher education. The President last night mentioned the support for community colleges. If you are a minority or your family is poor, you are less likely to attend college. We must examine how to close this gap so that college is within reach for all children,

regardless of race, regardless of income. We will work hard in this body this year to make sure, from Head Start all the way up through college, every child in America has that opportunity to learn and to achieve.

Our commitment to opportunity also brings me to mention welfare recipients as they work to gain independence and self-reliance. Since the enactment of the historic 1996 welfare law, 5.4 million fewer people live in poverty than when the law was passed. Caseloads have declined by more than half. Families once trapped in the clutches of government dependency are now on those first rungs of the economic ladder.

It is by no means an easy climb, but these hard-working Americans are succeeding for themselves, they are succeeding for their families. Today, 2.8 million fewer children live in poverty. Among African-American children, poverty has dropped to its lowest level ever.

Welfare reform is working. It is working because it is based on the belief that everyone can succeed if given the chance. This year, in this body, we will work to extend the promise of welfare reform which is at its heart the promise of the American dream.

As we move America forward on the domestic front, we must also continue to meet international challenges to the safety and security of the American people. There are many but none more important than the war on terror. The fight against terror will be a long and difficult struggle, unlike any struggle this Nation has known before. Let there be no mistake about it; we are at war, but we will prevail. Already we have made tremendous progress. After years of indifference to the threat of terrorism, the U.S. Government has, under the leadership of President Bush, made enormous strides in taking the fight to the terrorists. In just 2 years, America has toppled two terrorist-sponsoring regimes. In just 2 years, America has liberated millions of people. In just 2 years, America has brought avowed adversaries to the table of peace. Our bold, tough, unwavering leadership has yielded spectacular results. As the President said last night in the State of the Union Message, "No one can doubt the word of America."

Previously recalcitrant rulers are beginning to cooperate in the war on terror. After seeing our troops roll into Baghdad, the Libyan dictator, Muammar Qadhafi, called the Italian Prime Minister and said: I will do whatever the Americans want because I saw what happened in Iraq and I am afraid. Libya will now dismantle its nuclear weapons programs and join the Chemical Weapons Convention.

With the military defeat of the Taliban regime in Afghanistan and Saddam's regime in Iraq, American diplomacy has been further strengthened toward ending the nuclear ambitions of North Korea and Iran. North Korea and

Iran now feel the combined pressure of the international community to abandon their nuclear ambitions. I am confident in time they will.

Finally, change wrought by war has given old adversaries an opportunity to lay aside their grievances and begin the work of peace. India and Pakistan have agreed to peace talks. Syria has established diplomatic relations with Turkey. In each case, the opportunity to pursue a new course of peace between these historic antagonists is a direct result of the United States determination to oppose international terrorists and the regimes that sponsor them.

This is not to say the war against terrorism has been won. We are far from that. Yasser Arafat continues to cling to the tools of terror, frustrating the latest efforts for peace in the Middle East. In Colombia, a courageous new government fights a stubborn terrorist movement. But with clear-eyed determination we can find solutions to these conflicts as well.

Victory in the war against terrorism is inevitable because of the leadership of our President, because of the perseverance of our people and, most of all, because of the courage and sacrifice of our men and women in uniform. Every day they serve the Nation, our service men and women give this Nation their very best. They are not the first, but they are the latest generation to take up and bear arms, to travel from home and loved ones and risk all so we may live in safety, so we may live in peace. They deserve our deep gratitude.

I take one final moment to pay a special thanks to the 101st Airborne which is based in my home State of Tennessee and also in the adjoining State of Kentucky. Under the leadership of MG David Petraeus, a friend, the 101st is doing extraordinary work. You may remember it was the 101st that found and dispatched Uday and Qusay Hussein in Mosul. Since then, the 101st has moved more quickly than any other American unit in training guards and policemen for the new Iraqi civil defense guard.

They have also shown that the Iraqi people have tremendous generosity in their relationships with the United States. They have demonstrated the generosity through their action, through the action of the 101st Airborne, the generosity, the heart displayed by our service men and women in helping Iraq rebuild its infrastructure, rebuild its civic institutions and, even more fundamentally, the pride and hope of the people in Iraq, that pride and hope in the future. Together with the support of the Congress and the American people, the 101st is helping plant the seed of democracy in the heart of the Middle East.

There is yet much to be done, but it must be said that none of these developments was even imaginable 3 years ago. Because of the extraordinary leadership of President Bush and the courage of our men and women in uniform, America is safer. Millions of people

around the world are for the first time free.

Strengthening our homeland security, prosecuting this war on terror, addressing domestic issues such as education and health care and tort reform are just a few of the issues we will address this year. The President's judicial nominees will get the up-or-down vote they deserve. We will not allow a small minority of Senators to thwart our constitutional duty to advise and consent.

Look for action to protect unborn victims of violence, child custody protection, gun liability, bankruptcy, and many other legislative efforts.

We have laid out an ambitious agenda, one worthy of a great nation, one that will require strong, bipartisan work. We will be aggressive. We will fulfill our duty to serve the American people and make our Nation strong.

Some cynics say in a narrowly divided Congress, especially during an election year, that we are doomed to gridlock, that we can accomplish little. I strongly disagree. I believe everyone in this Chamber will do what is right and what is best for the American people and that is to move America forward.

There is much to be done and there is no time to waste. I thank my fellow Senators for their dedication. I look forward to another extraordinary year in the Senate.

I yield the floor.

#### RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. SMITH). Under the previous order, the leadership time is reserved.

#### AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the conference report to accompany H.R. 2673, which the clerk will report.

The assistant legislative clerk read as follows:

A conference report to accompany H.R. 2673, making appropriations for agriculture, rural development, Food and Drug Administration, and related agencies for the fiscal year ending September 30th, 2004, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the time until 6 p.m. will be equally divided between the chairman and ranking member of the appropriations committee or their designees for debate only.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, I ask unanimous consent to consume as much time as I will.

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

Mr. DORGAN. Mr. President, I listened to my colleague, Senator FRIST,

who is the majority leader. I have great respect for him. His call for bipartisanship is certainly welcome. I say to him and to others that those of us who serve in the Senate come here wanting to do good things for our country. We have a passion for good public policy that will advance America's interests.

But I must say, in the past year or so the evidence of bipartisanship is hard to find with respect to the way the White House and the majority in this Senate have dealt with the minority. We would welcome true bipartisanship.

I must also point out, while I think there are areas where we have made progress in this country, there are some very significant issues with which we must deal.

We have the largest budget deficit in history, and, no, it is not because of a war, it is not because of a recession. We had testimony at a hearing yesterday that said the largest part of this deficit is as a result of recurring tax cuts, very large tax cuts, the bulk of which went to the largest income earners in this country. If you earn \$1 million a year, good for you; you are very fortunate. You, also, under this administration's tax plan, get nearly \$100,000 in a tax cut each year as well.

We have a very large and growing Federal budget deficit, the largest in history. The President proposes increased defense spending, increased homeland security spending, and then decreased revenue. I went to a really small school, but mathematics is still the same. One and one equals two. That fiscal policy equals very large budget deficits.

We have a responsibility—all of us, Republicans and Democrats—to our children to put this fiscal policy back on track. This President inherited a large and growing budget surplus. We now have the largest budget deficit in history, and we must fix it.

We have the largest trade deficit in history, and we have to fix that. This administration is negotiating new trade agreements that, incidentally, will once again ship more American jobs overseas. It makes no sense to me for us to do that. We do have a global economy, but we ought not set American workers and American businesses up for competition against those around the world who will work 12-year-olds 12 hours a day for 12 cents an hour and then ship their products to the store shelves in America. That is not fair competition for American workers and American business. That is only about larger profits for multinationals. We need a better trade policy and to reduce those trade deficits as well.

We have many problems, significant problems, we have to address. I welcome bipartisanship. I hope Republicans and Democrats, who seek the same goal, who have the same interests and urges to improve this country, can work together.

But I want to talk a little about this Omnibus appropriations bill and describe why some of us are concerned about the lack of bipartisanship at the end of the last session and about the partisanship, especially that was exhibited. I want to talk about things that were put in this Omnibus appropriations bill, or things that were taken out, and how that was done, and why that was done, and why we think it is bad public policy.

First, let me talk about country-of-origin labeling. That is just a slogan. Not many people, perhaps, know what that is about. Let me describe it.

Upton Sinclair in 1906 wrote a book called "The Jungle." He was describing what happened in America's meatpacking plants. They had a rat problem, and so what they did to control the rats was they would take loaves of bread and lace them with poison and lay them around these meat plants so the rats would eat the poison. The rats would die and they would put the bread and the rats down the same hole, and out the back of those packing plants came sausage sent to the American consumer.

Well, Upton Sinclair wrote about that, exposed it in a book called "The Jungle." That led to tough new laws, inspections, saying you cannot do that. This is about the health and safety of the American people and the health and safety of America's food supply.

Country-of-origin labeling is about labeling food in this country. The necktie I am wearing has a label on it. I looked at it this morning. All neckties have labels. Why? Because they are required to have labels. I know where this necktie was made. In fact, I know where the shoes I am wearing were made.

But not everything is labeled. And especially in the advent of a case of mad cow disease, discovered in the State of Washington, with a cow that came into this country from Canada, or the case of the people who died from hepatitis in this country, and the hundreds who remain ill by hepatitis as a result of spring onions that came into this country from Mexico, the American consumers ought to have the right to have their food labeled.

Mr. President, I ask unanimous consent to show a piece of meat on the floor of the Senate.

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

Mr. DORGAN. This happens to be a steak. I would ask if there is anyone who could tell me where this particular steak came from? The answer is no. It is not labeled. Did it come from Canada? You do not know. Did it come from Mexico? You will not know. Guatemala? No. This meat is not labeled.

Let me read something about a packing plant in Mexico for the interest of the consumers in this country. In May of 1999, one inspector paid a surprise visit to a meatpacking plant in Mexico. This is what he said he found: "Shanks and briskets were contaminated with

feces . . . diseased-condemned carcass was observed ready for boning and distribution in commerce." But then the Mexican officials went to work to restore that plant's ability to sell meat into America. The Mexican plant regained its export license. It switched owners. It changed its name. It sells meat into America. And USDA has never returned. It has never again been inspected.

Do you want to know whether this meat came from that plant? I do. The American consumer ought to know.

This Omnibus appropriations bill contains something that is pernicious on this issue. We passed a law that is the law of the land that requires food labeling, meat labeling, and the Department of Agriculture will not implement it. This appropriations bill, with no debate and no discussion in the Congress, put a provision in this appropriations bill that says we shall delay, by 2 years, the implementation of this act. Why? Because they want to kill it. Why? Because the big packing plants got to them, and they don't like this.

The USDA says it is hard to implement. Nonsense. We can drive a vehicle on the surface of Mars and we cannot put labels on meat? Total nonsense. This is about big interests versus others. It is about consumers and farmers and ranchers being together in whose interest it is that we label meat and food.

On the other side are the big grocery manufacturers, the big packing houses that have fought this tooth and nail, and this administration and the majority in this Congress who listen to only one voice; and that is the biggest interests—the bigger interests. They are the winners. They are always the winners in this fight.

So the country-of-origin labeling provision in this bill is wrong. It was never debated. It was never agreed to. It ought to come out. Those who went into a room and wrote these provisions and stuck them into this appropriations bill ought to go back into the same room and fix it. We do not know which room it is. We do not know who they are because this was a partisan exercise. They did not invite Democrats. It was a partisan exercise. What they did is they served big business interests by sticking this sort of nonsense in the bill. That is country-of-origin labeling.

Let me describe something else. How about overtime? This is not about meat. I will put the meat away. I thank the Presiding Officer for allowing me to show a piece of steak on the floor of the Senate. There is not one Member of the Senate who would know where that meat came from because it is not labeled. It might have come from a plant in Mexico. It might have come from Guatemala. You do not know. I do not know. We do not know, but we ought to know. That is what the majority wants to prevent us and all consumers from knowing; and that is why they are wrong.

Let me talk about overtime. Let me talk about workers in this country. Do you know, for 65 years we have had a kind of pact in this country, a rule and a law that says if you want to work somebody overtime, you have a responsibility to pay them overtime pay? It is called the 40-hour workweek. We say, if you want to tell your employees you are going to work overtime, 10 hours of overtime every week, yours is a 50-hour week, you have a responsibility to pay them overtime pay.

The Department of Labor is now preparing to decide that they are going to change the overtime rules. Why? To make it easier for business to work people overtime without having to pay them. People whose judgments I respect say that up to 8 million Americans would be required to work overtime with no pay under this provision.

So we in the Senate and in the House, on a bipartisan basis, put a provision in this appropriations bill that says you cannot do that, Department of Labor; you cannot do that to the American worker. Guess what. In that same closed room, they took that provision out. It was bipartisan, voted on in both the House and Senate, but big business didn't like it, so it is gone. It is just gone.

The American workers deserve better than that. Do we really want to say to 8 million workers out there that we don't care about their families, about their income needs? We just care that after 65 years we want to change the overtime requirements so if their employer wants to work them overtime, they can. They don't have to hire more people. Why would they have to do that? They could just work people 50 hours a week because it doesn't cost any more. They can work them 50 hours a week with no overtime pay, or they can get rid of their job and hire somebody else.

For 65 years, we have had this overtime rule. These folks want to change it and hurt up to 8 million American workers.

That is in this Omnibus bill—the exclusion of the provision that Republicans and Democrats in the House and Senate put in. It was wrong to do that. They ought to put that exclusion in so we can block these rules and stand on the side of the American worker.

Let me talk about one more: Broadcast ownership. I will tell you why I am talking about these. It may be that those who do this have ear plugs; maybe they hear nothing. I don't know. I have told often of my hometown of 400 people, a tiny town in the southwest ranching country of North Dakota. I used to go down to see a blacksmith, John Krebs. I was fascinated to watch him work. He wore these big gloves and he had this forge. He would pump that thing and get a fire going, and then I would watch him put a piece of steel in this fire. The steel would heat up until it was almost white hot, and they would take it out with a big tool and go over to an anvil



and start to pound on it and bend it. You can bend it when you put heat on steel.

That is a lot like politics. When you apply heat, that is when things bend in politics. That is what this is about, trying to apply heat to those who went into a room and said we are going to get rid of meat labeling, or we are going to let the Labor Department tell 8 million people they have to work without overtime pay for more than 40 hours a week, or broadcast ownership, which is interesting for me.

Broadcast ownership. Who owns America's radio and television stations? That is a big issue. We voted on that issue in the Senate and in the House of Representatives. The judgment and decision we made was taken out of this conference after the conference made the decision and closed the title by unanimous consent. I was a conferee; that is how I know. The conference report on this Omnibus bill dealt with what both the House and Senate had decided, and that is that we will restrict to 35 percent national ownership, the ownership of television stations. And that was standing up to the big interests, taking on the big broadcast interests. We did it, Republicans and Democrats together. We passed legislation in both the House and the Senate, with Republican and Democratic support.

When we finished, we went to conference. Sitting in the conference, when we came to that title, I asked the chairman of the conference: Let me understand what you now intend to put in this conference report because they were about to close the title. I said: On the broadcast ownership issue, will this conference report include the 35-percent restriction that passed the House and Senate on a bipartisan basis? The answer was that, yes, it includes the position of the House and Senate, the 35 percent. I said that I will then have no objection to closing this title. Bang, the gavel came down, the title was closed, and the conference resolved that issue. It was done.

Mr. President, that is not what is in this bill. That is not what came from the conference. I was driving down the road in my car about a week later and I heard on the radio that the Senate was negotiating with the President on a different number. That is what is in this bill. Apparently, conferences don't matter. The gavel doesn't matter. The chairman closing a title doesn't matter. None of it mattered. None of it was on the level. What is in this conference report expands the ownership capability of broadcast ownership in television and radio—television with respect to this issue—in a way it abridges the decision made first by the House, then by the Senate, then by the conference.

I would like just one person to explain to me that process, or the rules that allow that process to bring that to the floor of the Senate. What is this about? It is about whether you are

going to stand up in this country for broad-based economic ownership, or whether you believe in the area of broadcast properties—those who determine what we see and what we hear and read, which increasingly are just a few people in this country—whether you believe they ought to be bigger and bigger and bigger. One company now owns over 1,200 radio stations in this country. I could bring out charts about all the broadcast properties in television and radio. You would see there is this orgy of mergers and acquisitions and a dramatic and damaging concentration.

That is what this fight was about in the Senate and House. In fact, the Senate passed a resolution of disapproval that I, along with Senator LOTT and others, on a bipartisan basis, passed in the Senate—a resolution that disapproved the entire Federal communications rule dealing with expanding the ownership capabilities of the big groups for radio and television and allowing cross ownership of newspapers and broadcast media. We passed that resolution of disapproval in the Senate that would disapprove the entire rule. That is now pending in the House of Representatives at the desk. It is only about 10 signatures short of passing there. They have, I think, 208 signatures.

You know what. Somewhere in a closed room, with just a few folks deciding, they abridged the decision by the House, the decision by the Senate, and explicit decision by the conference committee of which I was a member, with respect to broadcast ownership in television. I think that is a horrible policy choice, aside from the fact that, in my judgment, it casts aside all the rules as to how we do business.

It is fundamentally wrong for this Congress to weigh in and say, by the way, the sky is the limit; own everything you want. Let's have one company owning 3,000 radio stations. Let's have two companies owning all the TV stations. You know that the FCC rule says that in one big American city it will be just fine if you own three television stations, eight radio stations, the cable company, and the major newspaper. That is fine.

It is not fine with me. It is not the way things ought to be in this country. Yet it doesn't matter how we vote in the Congress. What matters is what a few people stick in an omnibus report that comes to us, which contains provisions that were not debated and not supported by either the House or the Senate. Why? I will tell you why. On virtually all of these issues, the White House says if you mess around with what we don't like, we will veto this.

We have compliant folks who bow and say if you say "veto," let us take it out. By all means, let us satisfy the White House, forgetting, I guess, that there are separate branches in the Government. We are not the White House.

The President has not vetoed a thing since he has been President. If he

wants to, that is fine. Does he want to make his first veto the country-of-origin labeling, or the issue of overtime? Does he want to make his first veto broadcast ownership limits? Maybe he wants to explain that to the American people, when the question is whose side are you on? The answer from the White House must always be that they are on the side of the big interests. Maybe he should explain that. But we will never, apparently, confront those issues of the veto threats because in every circumstance in this Omnibus, things were put in, or things were left out that thwart the will of the U.S. Congress.

What happened here is arrogant, just plain arrogant. So if you wonder why we are upset, I have explained three of them: overtime, country-of-origin labeling for food, and broadcast ownership. There are six or eight. I could go through more, but I will not. This is wrong, what happened to this conference report, flat wrong.

The majority leader is a good man. I am proud to serve with him. When he says to us let's have some bipartisanship, I say to him absolutely. But what they did on a partisan basis is arrogant.

There are provisions in this conference report that shouldn't be here, and provisions that should be here that were taken out. It was arrogant. They know it. This is not something we are going to allow to happen again. This place cannot and will not function this way.

I want this to be a bipartisan institution as well. While we might disagree from time to time, and we have people of good character having a raucous debate, that is just fine. This country will get, in my judgment, the benefit of what all of us have to offer if we have a good debate. I think Republicans have something significant to offer our country, as do Democrats.

There are times when we have aggressive debate about issues, and we pick the best of a competition of ideas. There are other times when we work together where we are near unanimous agreement. But this is not the way to work. This mistreats the minority. We are a significant minority at this point, just a vote short of a 50/50 Senate.

What happened here will not be allowed to happen again. I say that to the White House and to the majority. We insist on some semblance of bipartisanship.

Let me make one final point. Not only on this but on other issues, the majority decided not to have conferences. They would have what is called "a virtual conference," in which they would conference with themselves and exclude Democrats. That will not happen again in this Congress either. We will not appoint conferees unless there is a commitment from the chairman of the committee that the conference will meet with both members of the conference, Republican and Democratic caucuses.



Even more than that, we will not allow again something like this to happen: seven appropriations bills put in one omnibus and then in the middle, a little folder is stuck in that abridges the rights of the majority and minority with respect to specific votes in the Congress. It is not the right way to do business.

I accept the majority leader's call for bipartisanship. As far as I am concerned, sign me up on things on which we can work together. I want to do that. People of good will should do that for the good of this country. But we cannot call for bipartisanship unless we renounce the tactics that created this conference report with respect to overtime, country-of-origin labeling, broadcast ownership, and other issues. Those people have a voice in this Chamber as well—people who work hard, people who are consumers. They have a right to be heard in this Congress, and they were not with respect to those provisions in this Omnibus bill.

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of a concurrent resolution which I shall send to the desk correcting the enrollment of the omnibus conference report restoring the media ownership language to that which the conferees had originally agreed to; that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

Mr. BOND. On behalf of the Republican leadership, I object.

The PRESIDING OFFICER. The objection is heard.

Mr. DORGAN. Mr. President, my colleague from Missouri and my colleague from Rhode Island are waiting. I thank them for their indulgence. I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Missouri.

Mr. BOND. Mr. President, I ask unanimous consent that after I finish my remarks, the Senator from Rhode Island be recognized.

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

Mr. BOND. Mr. President, I have come to speak about the Omnibus appropriations bill. I say to my good friend from North Dakota, sometimes it is frustrating. We spent 8 years with an administration of his party, and there were many times we had to change appropriations bills. We had a very frequent presence from the Office of Management and Budget, and in order to get bills signed, we had to accede to Presidential requests.

In this bill, obviously, there are some very important provisions. When we are talking about country-of-origin labeling, the concern that comes to many of us in livestock-producing States, cattle producers and hog producers, if you are a small independent operator and you don't have a totally integrated operation, you have a very difficult time getting a total life his-

tory of every animal you might want to feed out and sell.

The ability of a large integrated operation which goes from cow calf to feeding, finishing and slaughtering, they are in a great position to live with the country-of-origin labeling. There are some real problems, which is why we asked for a delay in the implementation of the country-of-origin labeling. There had been a new proposal for an animal identification system which would make that prospect possible. In the absence of that, many of the individual small cattle ranchers and hog producers in my State think it would be impossible for them to sell their animals.

There are some conflicting needs. Those had to be resolved and, like any measure, an Omnibus appropriations bill has provisions in it that some people don't like. Certainly, in almost every appropriations bill on which I work, there are provisions I don't like. But we have to get it passed by both Houses. We have to get it signed by the President.

I am here today to urge that, No. 1, we move quickly to adopt the Omnibus appropriations bill and that we get on and work on a bipartisan basis without delays, without having to invoke cloture to pass appropriations bills for the coming year.

With respect to the Omnibus appropriations bill, I wish to call the attention of my colleagues to some very important provisions. There are problems that are happening every day because we were not able to pass the Omnibus appropriations bill in December. We worked on a bipartisan basis. The distinguished ranking member of the VA-HUD Subcommittee, Senator MIKULSKI of Maryland, and I put together what is a very difficult bill, but we think it is a very important bill. Probably the most significant part of it is for medical care.

The Omnibus appropriations bill provides \$28.3 billion in funds, including third-party insurance collections. This amount is \$3.1 billion over the fiscal year 2003 enacted level and represents a 12.3 percent increase over the previous year's enacted level, the one that will have to stay in effect if we continue to work under a continuing resolution.

At this point, our problem is we either pass this bill or go back to a continuing resolution. The figure of \$3.1 billion less for the current year means great hardship, great delay for our VA health care, among other things.

Make no mistake, these funds are urgently and desperately needed by veterans, especially for those who return from Iraq and the global war on terrorism.

If my colleagues visit, as I have, VA facilities, the Washington VA, and the VA facilities in my home State, anyplace they go they will find there is a tremendous delay in the ability to care for and take on veterans who qualify under the greatly expanded eligibility scope the Congress has mandated on

VA. There is a great delay in taking care of many of these people.

According to a VA analysis, there are 15,813 service members who served in Operation Iraqi Freedom who have been separated from military duty as of September 22 of last year. Among these service members, almost 2,000, or 12.5 percent, have sought VA health care during 2003.

Every day we hear unfortunate and sad news of American soldiers killed in Iraq. As illustrated by the VA analysis and scores of news reports, there are thousands of service members who were fortunate to live but were wounded in combat. As reported last October 1 by USA Today:

At least seven times as many men and women have been wounded in battle as those killed in battle.

As these wounded service members are discharged from the military and confront new and challenging hardships in piecing together a new life, most of them will depend upon the VA to meet their needs. I personally met some of these service members when I visited Walter Reed Hospital last month. I visited the VA facilities. I visited service members, such as Phillip Ramsey from Kansas City, MO, who was badly wounded in Iraq and will ultimately require extensive, long-term care from the VA system as well.

Further, we know that the demand for VA medical care is not going to lessen. We have already seen the VA medical care system being overwhelmed by the staggering increase in demand for its medical services.

Since 1996, VA has seen a 54-percent increase, or 2 million patients more, in total users of the medical care system. Further, the VA projects that its enrollments will grow by another 2 million patients from a current level of 7 million to 9 million patients in 2009. Getting the funds that we have approved in the Senate, approved in the conference committee, approved on the floor, and signed by the President is absolutely essential.

In addition, construction projects for new medical facilities and improvements to existing facilities will not go forward without this Omnibus bill passing. Under a year-long continuing resolution, the VA would not be able to begin funding construction for new facilities in Las Vegas and Orlando. Further, funding for the development of 48 high-priority, new, community-based outpatient clinics, and a number of new nursing homes will be curtailed.

In the years I have worked with the VA in my current position, providing community-based outpatient clinics is the most effective, humane, and efficient way of delivering service to VA-qualified veterans who would otherwise have to travel perhaps as much as hundreds of miles to get primary and routine care.

In another area, for 2003, pharmacy costs rose over 11 percent, and the VA is continuing to see increasing demands for prescriptions each month.

The continued rising demand for prescriptions is stripping funds from other priority areas as VA continues to operate under last year's funding level. Furthermore, the VA provides a high priority to the highest quality of life long-term care for each of its elderly veterans. The VA planned to expand its program by over 20 percent this year, but the VA will not be able to expand its long-term care services under a continuing resolution funding authority. This, in my view, is not the way we should treat the men and women in uniform who have served America.

The VA has made significant strides in improving claims benefits processing, but the VA's efforts would again be curtailed under a continuing resolution. The VA is currently on track to reach their goal of no longer than 100 days to process these claims, down from 233 days, which it was previously. They are trying to get there by the end of 2004. However, with a continuing resolution level at the 2003 level, the current year, the Veterans Benefits Administration would have to cut 500 full-time employees. Such a reduction would be catastrophic to the timeliness of claims processing and the expeditious delivery of benefits such as pensions to the needy, education benefits, and home loans.

At a continuing resolution for 2003 funding level, the VA cemetery services would be critically impacted and would result in delays in awarding shrine commitment contracts, awarding grants for State veterans cemeteries, and a reduced level of staffing that would negatively impact cemetery maintenance.

America's veterans rely on the VA to provide the services they need and have earned. Now is not the time to reduce funding levels, and that is one reason I urge my colleagues to approve this Omnibus bill.

In HUD, Housing and Urban Development, under a continuing resolution, the Section 8 Voucher Program for the needy who get housing through a voucher provided by the Federal Government would be \$2.1 billion short. That would result in tens of thousands of low-income families without rental subsidy assistance and potentially displace them. Certainly, that is not something we want to see done. That is another reason we have to pass the Omnibus bill.

For the Federal Housing Administration single family and multifamily insurance fund programs, the continuing resolution's limitations for the mutual mortgage insurance and general insurance/special risk insurance programs will be hit well before the end of the fiscal year. That would result in a suspension of new mortgage activities for a wide variety of home ownership and multifamily housing programs.

Moving on to NASA, our space program, under a year-long continuing resolution space science activities would be reduced by approximately \$425 million from the amount included

in the 2004 Omnibus appropriations conference report on the VA/HUD and independent agencies. Space science would be forced to accommodate the reduction by cutting missions that are currently in the pre-development phase, both technology and advanced concepts, which would likely result in delays to missions on origins, solar space exploration, and Sun-Earth connections.

NASA is also relying on the 2004 omnibus level for the space shuttle program in order to accommodate return to flight requirements. If forced to operate under a full-year CR, the ability of the space shuttle to accommodate these return to flight requirements would be reduced by nearly \$60 million.

Finally, the Corporation for National Community Service would be forced to limit grant awards to AmeriCorps programs throughout the country since the CR does not provide adequate funding to reach the President's goal of 75,000 volunteers. Under a year-long CR, the corporation would only be able to support between 45,000 and 47,000 members, about 40 percent less than provided under the Omnibus appropriations bill.

We went through a period of problems that have occurred in the Corporation for National and Community Service. Senator MIKULSKI and I worked to help them straighten out the problems. On a bipartisan basis, they have had strong support for getting back to the great work of the many volunteer programs, including AmeriCorps. Without this funding, there would be a drastic setback and we would find that the level of activity would be significantly reduced.

These are just some of the reasons, from the perspective of the VA/HUD and Independent Agencies Subcommittee bill, which is included in the Omnibus bill, why I hope colleagues on both sides of the aisle will agree we need to get on with this bill and go to work on the current year's business. We have far too little time to deal with all of the things we must deal with, and I hope we could get on with the job.

Mr. REED. Mr. President, I express my deep concern about several provisions contained in this omnibus legislation. Many of these provisions were in direct contradiction to the bipartisan actions of this Senate and the House of Representatives. It is alarming to me that in an Omnibus appropriations bill that the will previously expressed by both the House and the Senate would be contravened so arbitrarily and so dramatically. I am concerned about the process, as well as the specific issue that I come to speak about today.

First, tucked into this massive spending bill are several out and out gifts to the gun lobby. Some were included in a controversial House amendment and another was slipped into the bill later by the Republican leadership without a vote by the House and Senate conferees. That is highly unusual

and, in terms of procedure, very dangerous to the functioning of this body and, indeed, to the constitutional obligations we must perform.

These provisions, with respect to guns, reduce law enforcement's abilities to carry out their responsibility to enforce our Nation's gun laws, and they do not provide any benefit to law-abiding gun owners. The other people who benefit from these provisions are criminals and prohibited purchasers, those who should not have firearms, according to the laws of this country. Again, I hear time after time that all we should do with respect to gun safety in this country is just enforce the laws. This is the mantra of the NRA and of the gun advocates. But how can you enforce the laws if law enforcement authorities are required to destroy information they obtain through the gun sales procedures under the Brady Act?

From the beginning, this attack on law enforcement's authority has been highly suspicious. According to a report in the Washington Post on July 21, 2003, Representative TODD TIAHRT, in the words of the Washington Post "surprised many of his fellow Republicans" when he offered an amendment in the House Appropriations Committee. In fact, Representative FRANK WOLF, who chairs the Commerce, Justice, State Subcommittee on Appropriations, objected to the amendment, saying he had not had time to review it prior to its presentation. But Representative TIAHRT refused to withdraw the amendment and he won passage on a 31-to-30 vote, over the opposition of Chairman WOLF and Appropriations Committee Chairman BILL YOUNG.

Meanwhile, Mr. TIAHRT assured his colleagues that the NRA had reviewed the language. He said, "I wanted to make sure I was fulfilling the needs of my friends who are firearms dealers" and that the NRA officials "were helpful in making sure I had my bases covered."

This insertion of language over the objections of the subcommittee chairman and the full Appropriations Committee chairman, at the behest of the NRA, to take care of your friends who are firearms dealers is not what we should embrace in this Omnibus appropriations bill.

In the conference between the House and the Senate, appropriators modified several of the provisions on a bipartisan basis of the original amendment offered by Representative TIAHRT. But the Republican leadership later inserted a most objectionable item over, presumptively, the objections of the committee chairman and the subcommittee chairman. The provision would require the FBI to destroy approved gun sale records within 24 hours.

The 24-hours-records-destruction provision would put more guns in the hands of criminals by preventing the FBI from discovering and correcting erroneous gun sales under the National Instant Criminal Background Check System.

Currently, approved gun sale records are retained for 90 days to allow the FBI to perform audits of the National Instant Criminal Background Check System, to ensure that if criminals or terrorists or other prohibited purchasers have acquired such a weapon incorrectly, and contrary to law, that these mistakes can be corrected, that the guns can be retrieved. This is not an imaginary problem. The General Accounting Office found that the during the first 6 months of the 90-day retention policy, the FBI used retained records to initiate 235 firearm retrieval actions, of which 228, or 97 percent, could not have been initiated under the next-day destruction policy required by this Omnibus appropriations bill.

Let me repeat that. In a 6-month period, the auditing of these records enabled retrieval of 235 firearms that were in the hands of prohibited persons—criminals, people who were spouse abusers, the whole category of perpetrators who are prohibited from having firearms because of their records—235. If this rule were in effect then, they would have recovered 7, leaving 228 with dangerous individuals whose conduct has already underscored their unworthiness to carry a firearm. They would have had these weapons. I can't see any other result of this policy than to put more weapons in the hands of identified criminals or identified violent individuals.

No one in this country is walking around saying let's give violent criminals more guns. Again, the mantra is: Just enforce the laws. Make sure those criminals don't have access to weapons. This provision cuts at the heart of all the rhetoric and all the hyperbole about "just enforce the laws" and "guns don't kill, criminals kill," and exposes a grotesque miscarriage of justice. That is why organizations such as the International Association of Chiefs of Police and the FBI Agents Association oppose this provision.

But that is not all that is included in this Omnibus appropriations bill. The bill would also prohibit the ATF, the Alcohol, Tobacco and Firearms Bureau, from finalizing a proposed August 2000 rule that would require gun dealers to conduct an annual physical inventory of the weapons in their possession. The purpose of the proposed rule is to allow dealers to go ahead and identify missing and stolen firearms and report them to the ATF in a timely fashion.

You would think every responsible dealer in this country would conduct periodic inventories and, as soon as a weapon was discovered missing or stolen, their first instincts would be to contact authorities. But we know that is not the case because this community of Washington, DC suffered through a string of sniper killings months ago that traumatized not only Washington but the entire Nation, and this string of sniper killings can be traced back to a weapon at Bulls Eye Shooter Supply, the gun seller where John Allen Muhammad and Lee Boyd Malvo obtained

the assault rifle used in these attacks. After the snipers were apprehended, the gun was recovered and was traced back to Bulls Eye. What did they say? They had no record of selling the gun. They didn't even know the gun was missing until the shooting spree was over. The snipers' gun was just one of more than 238 firearms missing from Bulls Eye's inventory during the previous 3 years—a dealer who is missing 238 weapons in a 3-year period, one of which turns out to be the murder weapon in one of the most heinous assaults in the United States in many years. The ATF proposal requiring dealers such as Bulls Eye to conduct annual physical inventories is still pending. We should be urging them not to suspend this rule but to enact this rule. What could be more commonsensical, more obvious, after the sniper killings in Washington, than allowing the ATF to promulgate a rule so there is at least a physical inventory and requirement to report missing weapons?

We have learned nothing from the deaths of these people. We have learned nothing from the death of Conrad Johnson, a bus driver sitting in his bus reading his paper at 6:30 in the morning, supporting his family—his wife and his children—who was killed by these snipers.

This, to me, is preposterous. Yet here we are, trying to take an omnibus bill, holding billions of dollars in appropriations for all the programs my colleague from Missouri talked about that we all support—holding them hostage to provisions like this, to provisions that fly in the face of our experience and that undercut all the rhetoric when we talked about learning from the mistakes of the past, from ensuring that criminals don't have weapons, from enforcing the laws. We are undercutting the ability of law enforcement to do their job.

Finally, this bill prohibits release of any information regarding firearms production or sale that is required to be kept by gun dealers or manufacturers. In addition, no information or records regarding multiple handgun sales—where two or more handguns are sold to the same buyer within 5 days—or crime-gun-tracing information that is reported to the ATF could be reported to the public. No, let's throw a cloak of silence over all of these laws, eviscerate the regulation, and prevent any disclosure of information that should be public.

ATF has in the past made this information available under the Freedom of Information Act, but this information has been used to highlight some of the discrepancies and difficulties and deficiencies in our gun laws. As a result, the gun lobby doesn't want it out: No information, no knowledge, no problem. That is not right. There are problems here, problems we should address responsibly, and we are undercutting a responsible approach to ensuring that the present laws on the books are enforced. So the next time someone

stands up and says just enforce the laws, remember you can't enforce the laws if you don't know how they are being enforced—and that is the purpose of this provision—and you certainly can't require law enforcement authorities to enforce laws when they are prohibited from having the information to do that.

This is an important right for the public to know, particularly with respect to firearms tracing from crime scenes. As a result of publicly available information, there have been identified several firearms dealers who were the source of a preponderance of weapons at crime scenes. That is valuable information, not only to law enforcement authorities but to the general public, and that information should be public.

We are facing numerous problems about gun violence. We have the threat of terrorism. Last night the President spoke repeatedly about terrorists. This is a situation made to be manipulated by terrorists who want firearms. If the record of their purchases is destroyed in 24 hours, if there is no requirement for an inventory of weapons, think of how we are setting out a situation that can be exploited, not just by criminals but by people with even more malign designs on this country. We are doing it and we are doing it in the middle of the night, figuratively speaking. None of these issues was fully debated, particularly the destruction of records within 24 hours. Procedurally we should reject it. Substantively we should reject it.

There is another issue we should be concerned about that many of my colleagues mentioned, and that is the overtime rule for American workers.

Last year, the administration announced its proposal to significantly weaken overtime protection. The proposal would take away from many hard-working Americans their ability to earn enough to support their families. The timing of this proposal is even more egregious. It comes during a period when more and more Americans are struggling to make ends meet and while the country is bleeding jobs overseas.

It was announced this week that IBM was going to hire 15,000 people this year. The only problem is that they are only going to hire about 1,500 in the United States.

Yet for those people who are struggling to find jobs, to keep jobs, and to better their lives, we are telling the employers they do not have to pay overtime. It doesn't make sense to me. It doesn't make sense to this Senate because on September 10, the Senate passed a measure to prevent millions of American workers from being stripped of their overtime. We acted in a bipartisan fashion. In doing so, we reaffirmed our support for protecting these hard-working Americans.

Unfortunately, safeguards to overtime pay were stripped out at the President's request, again leaving Americans vulnerable.

At a time when the President is talking about job growth and providing additional benefits to families, why does he want to weaken the laws designed to create jobs and to protect hard-working Americans? We know what is happening today. Employers are not hiring full-time workers. They are extending the hours of their existing workforce because of the pressures they face. When you lower the number of people who qualify for overtime pay, that is an incentive to continue that practice of simply extending the hours of current workers and not hiring new workers. This will go against our hopes by all, I believe, that this year our economy can start hiring people again—not simply adding a few hours to the workday of existing workers. But certainly those few hours of additional work deserve to be compensated by overtime. This law cuts it. About 11 million workers receive overtime pay. Many understaffed fields such as nursing are required by law in many communities to pay mandatory overtime. Yet under this rule, that mandatory overtime would not in all cases be compensated.

Other workers rely on this extra income simply to make ends meet. The people who are in danger of losing their benefits are health care workers and technicians, paralegals, restaurant workers, draftsmen, therapists, retail managers, news reporters, police officers, firefighters, and even military reservists.

What I find most objectionable is that this proposal basically says that reservists who are coming back who have had certain kinds of training in the Armed Forces are no longer considered eligible for overtime pay. This is preposterous. These individuals could literally have left their employment a few months ago to respond to the call of the Nation in a time of danger and receive some training while they are in the military, or have that training before on the weekends as a reservist, and now find themselves penalized for the training they received in the military in terms of getting overtime pay. That is preposterous. That is what this rule would do. It could affect thousands of military reservists. That is not only unfortunate in individual cases, but that is a stunning snub to Americans who are risking their lives in serving their country collectively.

I again am amazed that such a proposal would even be submitted, and I am more amazed that we would, today, be prepared to vote on it in this Omnibus appropriations bill.

American workers work more hours than any others in the world—1,900 hours per year. Yet, still, they need more to get by and to make ends meet.

I am amazed that the administration would continue on this track of undercutting overtime in the United States, and I am extremely disappointed. Rather than trying to undercut the wages of Americans, we should be looking for ways to increase the wages of Americans.

I think these two provisions are problematic. Many more of my colleagues have spoken about that and have called into serious question both the procedures that brought us here and certainly the substance of these proposals.

At this time, in conclusion, I would like to propound a unanimous consent request.

I ask unanimous consent that the Senate proceed to the immediate consideration of a concurrent resolution which I shall send to the desk correcting the enrollment of the omnibus conference report; the resolution strikes the language which requires the FBI to destroy gun purchase background check information after 24 hours; that the current resolution be agreed to, and the motion to reconsider be laid upon the table.

Mr. MCCONNELL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REED. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, this is a time of challenge, and it is time for the Senate to step up to meet those challenges.

As the President carefully outlined last night, because of the filibuster in the Omnibus appropriations bill we find the Senate almost 5 months into the fiscal year still wrestling with the remaining funding bills from the year in which we are currently involved. We started a new calendar year trying to finish the business of last year. The Omnibus legislation is finished, and it is ready to pass except for the filibuster. With its passage, the Senate will finally complete last year's business.

To be sure, much of the Nation's business was accomplished by the Senate last year. We had hoped to be able to finish the appropriations business last December. In fact, last year the President called for an economic growth package to create jobs. The Senate passed it, and that plan is clearly working.

Last year, the President called for a Medicare drug plan so that our seniors would never have to choose ever again between groceries and needed prescription drugs. The Senate passed it and that help is on the way for our seniors.

Last year, the President called for full funding for homeland security. The Senate passed it, and America is safer.

Last year, the President called for funding of the liberation and reconstruction of Iraq. The Senate passed it and freedom is rising.

In normal times, that would be indeed a phenomenal record. But these are not normal times. These are times of unprecedented challenges.

The Senate's historic pattern of studious delay is out of touch with these demanding times in which we find ourselves.

This filibuster needs to come to an end. To that end, each Senator must

ask themselves the following questions about the funding of the Government: Should funding for most Federal departments and agencies be at the levels we agreed to in the last budget resolution, which we negotiated with the President, or should it be funded at a lower level and perhaps not at all? Should we fund the FBI at \$320 million less than we planned, even though most of that goes to their counterterrorism activities? Should we fund embassy security at the State Department with the extra \$15 million we agreed it needs for safety? Should we improve food security by providing the Food Safety Inspection Service with the additional \$20 million we agreed to? Should we keep faith with those who have borne the brunt of battle in the war on terrorism by providing veterans medical care with the extra \$3.1 billion we agreed to?

These questions obviously answer themselves. Instead, we wrestle with these questions still as we try to fund these programs. As we try to fund the Government for this year at the levels agreed upon in last year's budget resolution, we cannot begin to set the budget priorities for next year. The Senate cannot meet the demands of tomorrow if we are, today, revisiting the agreements of yesterday.

The demands of tomorrow are not going to go away. As the President stated last night: We may believe the danger of terrorism is behind us. That hope is understandable, comforting—and false.

The President is right. We have done much to improve America's security: our economic security, our health security, our homeland security, and our national security. But it is false hope, indeed, to believe we have done all that can be done or should be done. Economic security is improving as the economy grows and the unemployment rate declines. Health security has improved with enactment of a prescription drug benefit in Medicare for seniors and enactment of health security accounts for workers.

While homeland security has also improved, more must and can be done, but not if we are wrestling with the FBI budget of last year.

The national security needs in the coming years require our full attention, but that is not possible if we are still fighting to fully fund the State Department embassy security for last year.

Thomas Jefferson advised us that eternal vigilance is the price of freedom. Ever since he stated those words, America has tried to assess how they apply to us at a particular time and as we confront a particular challenge. The President has assessed the unprecedented challenges of our times and provided unprecedented leadership.

Our Nation has responded to the challenges as well. From issues of security to issues of prosperity, our country is moving forward behind the President's leadership.

The Senate should respond as well. But when we delay this bill for no reason other than for delay itself, we are not meeting the challenges of our time. This is a bill that should have been passed months ago.

There is a price for delay. We see it in the reduced funding of the FBI, embassy security, food security, and, of course, veterans health benefits.

We cannot yet see the price we will pay tomorrow for our delay today, but it is surely there. We delay setting the priorities for next year and building upon the security we have achieved in the last 3 years. We delay making our Nation safer and we delay making our economy stronger.

In these times of challenge, the time for delay is over and the time to act is now. It is my hope and the hope of many Senators on both sides of the aisle that tomorrow we will be able to wrap up the business of last year, finally, and get this important Omnibus appropriations bill down to the President for his signature so we can begin the work of the year in which we currently find ourselves.

The Senator from New Mexico is here. I yield the floor.

Mr. DOMENICI. Mr. President, I thank Senator BOXER who was entitled to go next. Before she got down here, we intervened and asked her if it would be possible I go ahead of her. So I will be next. We are trying not to break the commitment of one side and then the other side, but I will not be here if I cannot speak now. I am on my way to New Mexico to meet the President, ultimately in Roswell, NM.

Mr. President, I said yesterday to a large group of Senators that it is about time now to speak about the energy situation in America since we have a bill before the Senate that missed, in terms of filibuster, by two votes. That means that in normal times that bill would have passed handsomely.

What is happening around here, if you do not get your way, instead of voting on a bill, you threaten to filibuster. The American people have probably seen more 60-vote issues in the Senate in the last 5 years than in modern history. Almost every issue is turned into a 60-vote issue by a threat to filibuster. That was done on the Energy bill.

My friends, I can state what is happening but most of it is right in front of your face. We have the worst case scenario in much of the energy-consuming areas of the country, from the Rockies to New England, with the coldest 10- to 20-day period since the winters of 1977 and 1978. It was 14 degrees at my house this morning a block and a half from the Hart Building. Accuweather is predicting within 2 weeks we could have the coldest weather we have seen in 25 years.

Some people love the cold. Some people love the snow. But the point is America should not be brought to its knees economically and otherwise because we have a cold winter. We are

looking at a point in time not too far down the line when the major sources of energy for Americans will be so expensive that the American people will wonder what happened.

I am stating what is happening: Three or four Senators will not let us pass an Energy bill. That is what is happening.

Yesterday, natural gas was over \$6.50. To put that in perspective, when I first came to the Senate people—people can look at me and guess how long that was; some would say I look as if I have been here 100 years; some might say 15 years. I have been here 31 years. Ten years after I came here, we were talking about deregulating natural gas and the price of natural gas was 38 cents. Compare that to \$6.50.

We can look around the world and see what is happening. The great big monster economy called China has decided they do not have enough energy for their growth. They cannot find a way to quench their thirst for oil. Nobody knew that. It just came upon us. China, the fastest growing economy in the world, has put the word out: Buy oil. And even more than that: Buy the oil fields. Go invest money with oil companies and start owning the oil in the world. The underlying theme is China's thirst for natural gas, as well as to fuel its industrial revolution.

Yesterday, China reported economic growth of 9.9 percent. When there are over a billion people—1.3 billion or 1.4 billion—and they finally decide to take on some aspects of capitalism, they are producing overwhelming amounts of goods and services for themselves and for the world. Whether their leaders call themselves Communists or not, they love dollars and they love to produce things and sell to the world. They are a huge problem. But China is not alone. The population and economic growth is creating a voracious new demand for energy and the world is following in our footsteps.

The bottom line is we are allowing ourselves to become increasingly dependent upon imported energy. We used to say "imported oil." Now I can say "imported energy" because we are beginning to import, or will have to soon, natural gas, liquefied natural gas. We will have to buy that from overseas. And we ourselves will become dependent upon foreign natural gas just as we have grown dependent on oil but it will happen quicker and be more devastating.

Yesterday, unknown to most, a terrible event occurred with reference to the production of LNG, natural gas's substitute. A plant blew up in Algeria. Who would have been worried about it? Why would a Senator from New Mexico even have read about it 10 years ago? Well, we did not care about it because we did not use it. But a plant blew up. Forty-three people died, and all the production of LNG went out the window. Now, that is not our production. I should not be here crying about their losing it. But what I am telling you is,

they are not producing LNG to give it away. They are producing it to sell and to sell to us.

The bottom line is, we are allowing ourselves to become dependent upon imported energy. The EIA predicts that 36 percent of all our energy will come from overseas by the year 2025; up from 26 percent in 2002. Just think of that.

I believe some of my colleagues who do not like the current Energy bill and who want to duck and hope the energy prices will come down are going to just wait and see. They will not be coming down; they are going to go up. And when the question is asked, what did we do about it, it is going to be easy for some of us. We are going to say there was a chance to pass a bill, and because of two Senators it did not pass. Two Senators decided they would not vote for cloture, so the Energy bill, which would have done a lot of things which I will quickly outline in a moment, was not passed.

First, let me tell you about a couple things that we hear about often that the bill does not have in it. The bill does not have a change in the CAFE standards on automobiles. Because of that, some of my friends on the other side of the aisle, including the distinguished junior Senator from New Mexico, say this bill should have that in it and we have shirked our duty.

Let me say to all of you, what do you do when one House of the Congress does not want something? And what do you do when you cannot pass it in the Senate, you cannot pass CAFE standards in the Senate, and if you passed it in the Senate, the House will not take it? Let's talk it up. It might be something we ought to be doing, but you cannot do it. Does it mean we should quit, and it does not mean that is enough to kill a bill?

Secondly, MTBE liability. You all know what that is. It is in the bill because the House insisted upon it. Is it the end of the world? I do not think so. Is it enough to kill an energy bill? I doubt it.

A renewable portfolio standard means one group wants to not only give a wonderful tax credit to windmills and solar energy, but they want to mandate a percentage each State must produce. That is what these words mean: renewable portfolio standard. It is a mandate of a percent. Isn't that interesting? Every State does not have wind, but they are mandated to produce a percent of their energy from wind. Can you imagine what is going to happen administratively? They are going to have to buy credits or they are going to have to do something, because this law would do that.

Frankly, the Senate did not want it, and the House did not want it, but a few people said: We will not vote for the bill unless that is included. How do you put it in when over half the people in both bodies will not vote for it? Certainly, the House told us, in 30 seconds: Do not talk about a percentage, a mandate. We will never put it before the

House. We do not want it. That is the end of it.

Now, we all know ANWR is still hanging around, we all know the giant issue of offshore drilling is still hanging around, and they are not in this bill.

Like it or leave it, the bill represents the current consensus position of the Congress. If we were looking at 51 votes being necessary, which is what you usually need, this bill would be over with, the points of order would be done with, and we would be on our way to doing what it does.

I believe the deal before us is the only one that does enough, that can currently be reached. I do not believe it is possible to go back to the table and negotiate a different agreement. Why? Because whatever we bring to the floor will be debated ad nauseam.

The last time we tried to pass a bill to go to the House with, you all remember, there were 370-plus amendments pending up there at the desk when we struck a deal with the Democrats to take last year's bill. Remember that? That meant they were not very interested in helping us get a bill then. That is something I direct at a number of Democrats who might not have thought they were doing that, but that is what they did. Luckily, the minority leader said: Why don't you take last year's bill, and I told our leader, BILL FRIST: Take it. I think they could not imagine we would take it. We took it and went to conference. And then, of course, we could negotiate around all the bills.

(Ms. MURKOWSKI assumed the Chair.)

Mr. DOMENICI. I know if we are going to be able to get 60 votes for this agreement—I do not know if we are going to be able to, but, frankly, there is part of me that is quite all right with that. As prices and imports rise, Members are going to begin to reconsider their position. They are going to begin to reconsider their opposition to domestic production. I believe at some point, if we do not take intervening steps, we will be forced to open ANWR.

I say to the occupant of the chair, which you have been advocating since the day you arrived, and for the many days you were in your State legislature, unless we get control of this situation, I think we will find ourselves confronted with that decision, sooner rather than later.

As much as we possibly can, without a new political consensus about energy, this bill addresses the following problems. This is a minimal list.

One, it makes regulation of the electricity grid predictable so new investment can flow into the transmission system. It is a huge part of our problem.

Two, it encourages massive new construction of windmills—60 gigawatts is expected, at a minimum, of new wind power, about 10 times the current amount. Why? Because this bill makes the production tax credit permanent.

And listen up. It expired as of January 1. It is not there for those who are building windmills. They know it is gone. It is in this bill. It is there for biomass and a lot of other things.

Now it makes a new generation of clean coal possible through tax credits and research and development. As gas prices climb, we are going to burn more coal. I would like that to be as clean as possible, and this bill makes that possible.

It results in more domestic oil and gas production.

It will result in the construction of perhaps four nuclear powerplants. Some other things have to happen, but it opens the door.

Frankly, I believe that for this world crisis I have been talking about, of everybody wanting more energy, there are only a few ways to dampen the impact of that on the world. One of them is going to be new, modern, different nuclear powerplants. No doubt about it, that is going to be one of them. America led the way. We ought to continue leading the way.

This bill will result in encouraging the use of hybrid cars because there is a big tax credit for them. In fact, those companies that are exploring them believe they could never sell them without the credit provided in this bill.

It massively expands our use of domestically produced ethanol, meaning our farmers will be more in command of their future and their destiny than ever before.

Needless to say, bills do strange things. This bill is more for the farmers than anything else we have ever done. Everybody knows it. I asked yesterday in the presence of 30 Senators, those who have big farms and much corn production, would you tell me what the most important issue in your State is? Is it ethanol? Every farm State Senator in that room said it is the No. 1 issue in their States.

How many times have we taken the floor of this Senate since Senator REID and I have been here, when Senators have come and said: We have to do this for all the farmers? It just happens that the farmers are in this bill. It is going to produce a substantial amount of gasoline because ethanol is an additive that will expand the use of gasoline immensely. So throw it away because you don't like some provision or you believe what many have been saying about this bill—that it has too much pork in it.

Well, I can tell you that if we have time available at another time, we will talk about the pork. I will tell you about one piece, and it has been written many times because one Senator used it on the floor twice. It has to do with a new plant that might be built in my State, which will be the construction of a new plant for highly enriched uranium. We only have one such company in America. Shameful. We used to have all that market. This company that exists now doesn't want a new one built. They have sent to Senators and

newspapers around the country an unsigned document where they maliciously and erroneously talk about that plant. Some people have refused to use it, thank you, because they didn't sign it. Nobody signed it. But somebody used it on the floor of the Senate and said that New Mexico stood to gain \$500 million to \$700 million, and what a shame that such pork is in the bill.

That isn't even in the bill. Read it. It says anybody who wants to build a new plant of that type, two things will happen—it says anywhere, not just New Mexico. The license will be approved in 2 years and, second, if they want to make an agreement for the Federal Government to dispose of their waste, they can make one, and they will have to pay the Federal Government full price. What this company—which wants no competitor to be built—did was price out what you might have to pay the Government, and then said we are giving it to a State—a total unequivocal fabrication.

Many of the other so-called lard matters in this bill have been matters that have been around here for years for States that produce much of our oil and gas. They finally got a chance to have some equity done to them. When you finally get there and you have the best package you could ever put together, I don't know why we have Senators who find excuses. I think it is because they don't believe there is anything that can be laid to rest on their shoulders in terms of what they have done for this great country and what they have failed to do.

I actually believe that of all the things domestically that the President of the United States mentioned, and all the things we will be debating, there is nothing more important than what we do about our energy availability for future generations. It is No. 1 in my book. You have not heard much from me because, after working for months on it, I was shocked that I could not get 60 to vote to get around a filibuster. I believe sooner or later those who have done this to this bill will pay the piper politically. I say to our President: I believe you ought to be pushing this bill a lot harder.

Some worry about its cost. Let me tell you, the cost of this bill is infinitesimal compared to the cost to future generations of not producing natural gas from Alaska, leaving it up there instead of bringing it down here, and all the things like that which are in this bill. It is absolutely crazy. Costs, say some, are too much. If everything has to be paid for, and it goes the way it says, it is \$1.6 billion a year. Do you know what that means? Americans spend \$400 billion a year on energy. If that is going up 10 percent, when the rest of the domestic product is only growing at 2 percent, that would be an 8-percent differential. Just do the arithmetic. Eight percent times 400 is \$32 billion a year in cost growth being put on the backs of hard-working Americans.



It is time we talk real sense about this. I will not let it go. But you all know there is only so much you can do and only so much of yourself that you can give to an issue. You have one thing growing up after another that people invent and argue about, and that same person just fails to want to argue about the validity of the entire bill. It is truly something that we would look at America and say we love democracy and we love to vote, but this is one that it sure would be good if some of these things could be done by the President of the United States. Not so. Can't be. We have to go do it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Madam President, Senator BYRD has time that has been reserved. He has indicated to me that he is going to speak for 2 hours. He will be here at 12:30 to begin his important discussion about the bill now before the Senate.

I understand the intensity and sincerity of the feelings of the Senator from New Mexico. As Senators know, he and I have worked together for many years on the Appropriations Committee, the Energy and Water Subcommittee, which is a very important part of our Government. He has been chairman, I have been chairman, and we have worked together and developed a tremendous amount of affection for each other. I repeat that I know how strongly he feels about this legislation. There may be some who feel differently about this bill, and whether their feelings are as intense as his is not important. But there are people who feel very strongly about this and they have problems with this bill. I hope before this year's end we can work toward having an Energy bill for this country.

There are things in the bill that are extremely important to the State of Nevada. I have personally told Senator BAUCUS and Senator GRASSLEY how I think they have done remarkably good work, generally speaking, with the tax provisions of the Energy bill. So I hope that at some time we have the ability to work something out on this legislation. I know I will make myself available to the Senator from New Mexico to see if there is a way we can narrow the gap. As the Senator from New Mexico knows, there may be two, three, or four Senators who are crucial to coming up with finality to this bill. If we can work something out to satisfy those individuals and not lose some on the other side, maybe we can do something.

I want to say this, though, to my friend from New Mexico, not in relation to the Energy bill but to the underlying bill. The Senator went to some length talking about things that both bodies did not agree on and people are upset that it is not in this Energy bill. Well, I can understand why the Senator from New Mexico, being the legislator that he is, cannot understand why if the House and the Senate by their bodies assembled have not ap-

proved legislation, how in the world you think the conference committee can stick it in when both bodies have not agreed to it. With the omnibus bill, you have the opposite situation. In the omnibus bill now before the Senate, you have the Senate and the House duly assembled who have voted overwhelmingly to support provisions, and the President and his minions go to the conference committee and say you are going to take these things out or you are not going to get a bill.

Are they things that don't matter? No. They are very important. For example, overtime. The President wants people who make more than \$22,000 a year to not be eligible for overtime pay. The House and the Senate said we don't agree with the President, and we passed legislation by virtue of amendments in this body and in the House which said you cannot do that, Mr. President. The President said: I don't care what you have done in these two legislative bodies. I want it out.

Now, if that wasn't bad enough, he goes to an issue that is so important—and I repeat on the Senate floor today that Monday night we had a little family gathering, which we call “family home evenings.” We had our children and we went to this Caribbean restaurant with my three grandchildren who live in Washington, and my daughter and son-in-law, Landra and I. My little 13-year-old granddaughter has had mononucleosis. She has been sick and has missed a lot of school. She came to dinner. She is feeling better. She attended school yesterday. She was real hungry Monday night. One of the things with mono is you don't have an appetite. She was hungry. She ordered something she really liked, steak and fries. It had a fancy name for it, but that is what it was. She ordered steak and fries.

While we were in conversation, I heard her say to her brother who is 8 years old: Aiden, would you like some mad cow? Here are my grandchildren. They know this is bad. We know there is no way to prevent the beef that goes into this restaurant from coming from Argentina, Mexico, or Bolivia. I don't know where else they raise beef. Canada. We know they raise beef there. Even my grandchildren are concerned about mad cow disease.

In the bill that we wanted to come before this body, there was a provision in it that said you have to have a country-of-origin labeling on the meat that is sold to consumers. The President said: I don't care what the House and Senate have done; they passed these overwhelmingly, but I don't care because I want to take care of my corporate friends, and my corporate friends say country-of-origin labeling is not good; I don't care about mad cow or hoof-and-mouth disease; if you want a bill, you take this out. The Republican leadership in the House and Senate said: OK, Mr. President. And they took it out.

So now this bill, which will probably pass tomorrow, does not have that pro-

vision in it. Country-of-origin labeling is not in the bill.

I don't think that is a real good deal. It is too bad. But he did the same thing with how much ownership these big broadcasters can have.

I didn't come here to talk about this, but with what Senator DOMENICI said about if you don't put something in a bill, how do you expect it to be stuck in conference, I say if you put stuff in a bill that is passed by two duly assembled bodies, how in Heaven's name can the President in conference demand it be taken out? He has done it, especially on issues that deal with the average American: overtime and labeling of beef. It is another example of this President being the President for corporate America and not the people who work for those corporations.

Yesterday, the New York Times reported that the administration wants to increase Medicare payments to insurance companies and HMOs by a record 10.6 percent. This handout, which is five times as large as the typical increase, was mandated by the new Medicare law that passed this body by one vote.

The Congressional Budget Office estimates those extra payments to private plans will total more than \$500 million this year and over the next decade \$14 billion; \$14 billion extra, added on that the taxpayers are going to shell out to insurance companies and these health care providers.

We could do a lot of things with \$14 billion. Instead of this handout, maybe there are ways we could use the \$14 billion to help Nevada. People in Nevada need health insurance. There are in America today 44 million Americans who have no health insurance, and Nevada is at the top of the list. We could cut health care costs paid by patients, improve the care they receive, and expand coverage. For example, the direct benefit created by the new Medicare bill is confusing and certainly inadequate. Instead of wasting \$14 billion on this handout, we should use that money to give seniors the drug coverage they need and not give it as a sop to the insurance industry.

Under the new Medicare law, a senior must spend \$810 out of pocket per year before he or she will receive a penny from Medicare. And a senior who spends \$5,000 a year on drugs will be stuck with almost 80 percent of the bill. Essentially, this law will penalize our sickest seniors, the very ones who need help the most.

The new law has a huge gap in coverage. Listen to this. Once a senior spends \$2,250 on prescription drugs, he or she will have to pay the full price for drugs until they get up to \$5,100. Obviously, these people who are using \$2,100 worth of drugs are sick. That doesn't matter. There is a hole, a big hole until they hit \$5,100. They pay it all. But they have to continue to pay premiums the whole time.

Instead of a handout to the insurance industry, we could use the \$14 billion to



protect senior citizens who will actually be worse off under the new Medicare bill. In Nevada, 15,000 seniors stand to lose the coverage they currently receive from former employers, and our poorest seniors in Nevada, those who receive both Medicaid and Medicare, will be forced to pay a copay under the new law, something they don't have to do at present. This will create a new expense which will be a significant burden for those with chronic conditions and disease who are struggling to make ends meet on fixed incomes.

We can use the money to provide a drug benefit now instead of waiting 2 years while our seniors struggle with the rising cost of drugs. It took less than a year to start the entire Medicare Program, and that was before we had computers. Surely, we can add a drug benefit in less than 2 years.

Finally, we need to expand health care coverage. As I said, there are 44 million people in our country who don't have health care coverage at all. In Nevada, a sparsely populated State, 600,000 people under age 65 were without health insurance last year. Most of these people, including children, are working families. They go to work every day, but they can't afford the peace of mind that comes with health insurance, so how can we afford an HMO handout of \$14 billion?

My youngest son who is a lawyer and worked here in Washington got a new job in Las Vegas. He is educated. He has two little girls and, in a matter of days, is going to have a third little girl. He could afford the gap coverage until he got his new job. Most people couldn't do that. For just I think 2 weeks he had to pay \$1,200 to have coverage for his family. Most people can't do that. Most people have these big gaps, and they are stuck when an automobile accident or something happens to them in the way of illness and they have no insurance.

I want to make it clear that I am not opposed to private health care plans in Medicare. I have received letters from senior citizens in Nevada who told me they are enrolled in Medicare HMOs, and they have told me they are happy with the care they receive.

I am not opposed to competition. Make no mistake; competition is a good thing. It is a strong incentive for efficiency and productivity. I think this administration has a different definition of competition than I have.

They are all in favor of competition when it comes to a worker in a national park who might be making \$30,000 a year. They think people like that should compete with private contractors to keep their jobs. But when it comes to big corporations, such as HMOs, the administration doesn't like competition. Why else would a company such as Halliburton get a billion-dollar contract without even submitting a bid? That is not competition.

Why does the new Medicare bill contain a provision that expressly forbids

the Government to use its bargaining power to negotiate prices with drug companies? Is that how the free market is supposed to work? No. Now we have a handout for insurance companies.

We were told it would be good to let private companies compete with traditional Medicare because they would be more efficient which would allow them to provide better care and less costs.

While I am talking about privatizing, don't forget last night the President again in his State of the Union Address talked about privatizing Social Security. I have to hand it to him, he has a lot of nerve because it is rare I find anyone who wants to privatize Social Security. He had some buzz words, but that is what it all meant.

These private companies that compete with traditional Medicare now have their hand out for a 10.6-percent increase because they say it is the only way they can continue to serve Medicare patients. That does not sound very efficient to me. It does not sound like competition. It does not sound like a great deal for seniors who are struggling to buy medicine or for taxpayers. It certainly does not sound like real competition.

This HMO handout to the insurance industry and the managed care entities is an example of the way the administration has one set of rules for the big-money interests, the corporate interests, and another set of rules for people who work for these corporations.

Competition is OK for ordinary folks, but the fat cats get sweet deals like the HMO handouts.

This is a case of misplaced priorities, just like the misplaced priority of spending \$14 billion on a corporate handout instead of using it to improve health care for ordinary Americans. This is just one more reason we need to work to fix the problems in Medicare so seniors will have the coverage they deserve. I hope the administration will take another look at its priorities and reconsider this ill-advised HMO handout. According to the State of the Union last night, he has his veto pen ready in case we try to do it.

Before I yield the floor and before Senator BYRD speaks, we have been gone for a few months and it is good that I remind myself on occasion how I have been educated in the years I have been in Congress, now more than two decades, by the senior Senator from the State of West Virginia. Better than any movie, any ball game, any recreational activity that I can think of, I have had more fun learning from the Senator from West Virginia. I still look back with almost reverence to his lectures on the line-item veto, on why it should not be done and why we would be like the Roman Empire. It would be the beginning of the end of legislative power. It would be the beginning of the end of this great Government that we so much admire.

I remind the Senator from West Virginia, those lectures—and I call them

lectures because they were done by someone who knows as much as any professor about the Roman Empire—they were done so well that at the University of Nevada Las Vegas, the head of the political science department taught a course based simply on the lectures of the Senator from West Virginia. So whether he is talking about Iraq, as he has done so well, about homeland security, about the energy policy in this country, about the State of West Virginia and what needs to be done with transportation and what needs to be done in this country, all of these many subjects have been lots of fun for this Senator from Nevada. I have been educated, and I am a better Senator and a better person and the State of Nevada has done better by me as a result of learning so much from the Senator from West Virginia.

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

Mr. BYRD. I thank the very distinguished Democratic whip for his gracious comments. He has been an inspiration to me. I once served as the majority whip in the Senate. I counted myself a good whip, but remember those lines: You are a better man than I am, Gunga Din.

Well, this whip from Nevada is the best whip that I can recall in my long service in this Senate, and I am a former whip.

The distinguished Senator from Nevada mentioned ball games. No ball game ever changed the course of history. With all due respect to those who like football, basketball, and baseball—and I like them, too. I used to enjoy playing baseball in the sandlot back in the days when Babe Ruth and Lou Gehrig were in that great murderous lineup, the New York Yankees. I can remember September 1927 when the sultan of swat, Babe Ruth, broke the record with 60 home runs that year.

The Senator's mention of the line-item veto is of interest. I was right in what I had to say about the line-item veto. I know certain Senators whom I personally asked to vote against that line-item veto, and they did not. They did not heed my admonishments, but the Supreme Court of the United States called that law invalid. Thank God for the Supreme Court of the United States in that instance.

I thank the distinguished Senator.

Mr. President, this afternoon I want to talk about the 2004 omnibus conference report on those bills. The Senate opened the second session to the 108th Congress not many hours ago. While the year on the calendar has changed from the last time we met in this Chamber, the Senate finds itself handcuffed by the same authoritarian dictates from the same Bush administration that last year led to some of the most fierce partisan passions that this Senate has seen in decades. Gone is the traditional spirit of cooperation. Yes, the man in the White House who said that he was going to change the

tone in Washington, he changed that tone all right. It is the worst that I have seen in my more than 51 years in Congress. Gone is that traditional spirit of cooperation. Gone is the belief that the needs of the Nation are above the needs of any political party. In their place is an agenda driven by pure rank, raw partisanship. This is a tragic turn for this historic Chamber, a tragic turn for these United States of America.

Hope for a bipartisan Medicare prescription drug benefit was bright at the start of this Congress, but by the time the conference report returned to the Senate for final passage, all that was left was a prescription for protecting the pharmaceutical industry and a drug benefit that is a sham for American seniors.

Progress on an energy strategy for the country began in a cooperative effort but quickly the Democrats were locked out while industry lobbyists were welcomed in to write the conference report with the executive branch.

The fiscal year 2004 appropriations bills have suffered a similar fate. Between June 26 and September 4 of last year, the Senate Appropriations Committee reported all 13 appropriations bills, bills that were the result of bipartisan cooperation between the chairman and the ranking member of each subcommittee and those subcommittee members. The bills were tight and lean because of unrealistic budget limits, but Senators worked in tandem to craft balanced legislation. Despite the efforts of the chairman of the committee, the senior Senator from State of Alaska, progress on the bills waned, and as a result we faced the grim Frankenstein aberration of an Omnibus appropriations conference report.

I warned the Senate that such an Omnibus appropriations bill could grow limbs like trees, limbs like an octopus, limbs that never were contemplated by the Senate. I warned Members on both sides of the aisle that they could not control the outcome when the seed of an omnibus bill was planted in a closed conference. I warned that a Senator's right to debate controversial legislation would be lost. Finally, I warned that such an omnibus bill would invite the White House to the table.

Never was the White House invited to the table when I was chairman of the Senate Appropriations Committee—never. It is all right for them to be in an outside room but not at the table, no. I warned that such an omnibus bill would invite the White House to the table and that the Congress would once again forfeit its constitutional right to write legislation. Negotiations on that legislation started well enough. The House and Senate Appropriations Subcommittees worked on their respective pieces of this mammoth bill. The conferees held an open session under the able leadership of Senate Chairman TED STEVENS and House Chairman BILL YOUNG, and several of the chapters of

this behemoth bill were settled. But this tale does not have a happy ending. No, this chariot, drawn by tall horses, quickly turned into a pumpkin. Have you heard that before? It quickly turned into a pumpkin, pulled by rats before the clock struck midnight.

The White House decided—the White House—the White House decided that bipartisan negotiations were unacceptable. The White House pulled the plug on the conference and took it behind closed doors. The Republican congressional leadership bowed, bowed down to White House pressure. Suddenly, Democratic Members of Congress had no voice in the legislation. Senator GRAHAM, the Democrats had no voice, suddenly, in the legislation they had only days before helped to move to the verge of passage.

In the back rooms of the Capitol, the White House sat down with the Republican leadership and with fat-cat lobbyists representing big corporations and produced an unamendable 1,182-page, \$328 billion conference report. They produced a conference report that turned the legislative process on its head.

You think Speaker Joe Martin, Republican Speaker of the House—Joe Martin of Massachusetts—would have stood for that when he was Speaker of the House? Do you think John Taber of New York, Chairman of the Senate-House Appropriations Committee, would have stood for that in his day? No.

Four of the bills contained in this omnibus did not have a recorded vote in the Senate. That is all right. A voice vote or a vote by division are just as legal and legitimate as is a rollcall vote. But one of the bills, the Commerce-Justice-State bill, was never even debated, never even debated in the Senate, let alone adopted by a vote of the Senate.

Shame. Shame on us for letting that happen.

So there you have it. The Commerce-Justice-State bill was never even debated in the Senate, let alone adopted. Scores of provisions were included in the so-called Miscellaneous Appropriations Act portion of the conference report that were never debated, never debated in this Senate. What has happened to the legislative process here under the leadership of the Republican administration, the Bush administration? Under pressure from the White House, provisions that were approved by both the House and Senate have been dropped. Get that. Under pressure from the White House, provisions that have been included, that were provisions included in both the House and Senate, have been dropped.

A point of order could be made under rule XXVIII that would kill this conference report. Under pressure from the White House, controversial provisions that were written as 1-year limitations when they were before the House or Senate have been mutated into permanent changes in authorization law.

This conference report includes an across-the-board cut never debated here in this Senate, an arbitrary cut that would apply to legislation already signed into law. It would cut homeland security. It would cut counterterrorism efforts. It would cut education and health care. This across-the-board cut would reach back into laws that agencies have been operating under for 4 months.

In the view of the White House, the United States can afford \$1.7 trillion in tax cuts. When it comes to the Medicare bill, we can afford \$12 billion for subsidies for private insurance companies. When it comes to the Energy bill, we can afford over \$25 billion of tax cuts and \$5 billion of mandatory spending for big energy corporations. But when it comes to initiatives funded in these appropriations bills, initiatives that help ordinary Americans every day, the President insists on cuts.

He didn't say anything like that in his big speech last night. No, he didn't say anything about that, a cut of 0.59 percent would reduce funding for No Child Left Behind programs by more than \$73 million, resulting in 24,000 fewer children being served by title I. The across-the-board cut would reduce veterans medical care funding by \$159 million, resulting in 26,500 fewer veterans receiving medical care.

The President lauds the military, as he should. He applauds the soldier, the sailor, the airman, the marine. But when it comes to veterans, 26,500 fewer veterans will receive medical care, or 198,000 veterans not getting the prescription drugs they need. Was anything said about that in the speech last evening? Not a word.

The across-the-board cut will chop funding for homeland security initiatives. How many more baggage screeners will be laid off, resulting in longer lines and less security at the airports? How many fewer flights will have air marshals on board? Nothing said about that in the State of the Union speech. No, no, no. How many more containers will come into this country uninspected? How many more illegal aliens will be able to remain in this country or how many more will be able to sneak into this country? Not a word said. How many potential terrorists will never be investigated because of cuts in the FBI? The Bush tax cuts will cost \$293 billion in the calendar year 2004. More than \$1 out of every \$4 being spent on those tax cuts is going to the top 1 percent of taxpayers in this country. They didn't put me in office. No, those on that side of the track didn't put me in office. The Bush tax cuts—let me say it again—the Bush tax cuts will cost \$293 billion in the calendar year 2004.

More than one out of every four dollars being spent on those tax cuts is going to the top 1 percent of taxpayers in this country. Are you in that category? Are you, Senators, in that category? I don't know. But I know a lot of people who sent me here who are not in that category.

Taxpayers with incomes that average about \$1 million per year will receive an average tax cut of \$85,000 in the year 2010, while those taxpayers earning less than \$73,000 will receive at best 1 percent of what a millionaire will receive and at worst a paltry \$98 in the year 2010.

How will we pay for this? Oh, that will be somebody else's problem. This President will be back on his ranch in Crawford, TX, living it up and having it good. What about your children and my children? They are going to be left to pay for this.

How will we pay for it? With cuts in education, cuts in veterans' programs, and cuts in homeland security.

In the dark of night, behind closed doors, the White House filled this conference report with favors for big corporations. Everywhere you look, you find the interests of corporate America coming first and the needs of working Americans coming in last.

The Senate approved a provision to block for 1 year the administration's plan to take away the rights of as many as 8 million employees to earn time and a half for extra hours worked. This administration produced a rule so biased toward industry that it even included advice to corporations on how to avoid additional wages.

Yet the Senate provision—what happened to it? What happened to that Senate provision? It is gone, obliterated under the darkness of night, taken out.

At the request of the food marketing industry, rules to allow Americans to know where their food, such as beef and vegetables, is grown are delayed for 2 years, breaking the balance crafted as part of the 2002 farm bill.

During the consideration of the 2002 farm bill, the Senate included a provision—the Senate; that is, us—included a provision to ensure that American consumers were provided with information about where their food originates—where it comes from. This so-called country-of-origin requirement became law and was immediately attacked by industry forces. When the smoke of the agriculture conference cleared, we found that industry forces had worked overtime to slip out of their statutory requirements. The country-of-origin issue was not even allowed to be discussed at the conference. The decision whether to keep or whether to kill the country-of-origin requirement was made behind closed doors after the conference was adjourned subject to the call of the Chair. I was in that conference. It was adjourned subject to the call of the Chair. They didn't have any use for me anymore. I was locked out. Senator BYRD can go home now. He will not be in on the decision. We don't need you there. You can go home now subject to the call of the Chair. Of course, the call never come.

Roy Acuff used to sing, "I called and I called but nobody answered. I called and I called but nobody answered."

Democrats of either the House or the Senate were not in the room.

I wonder how many of our listeners remember the first question that was ever asked in the history of man. What was the first question that was ever asked? It was asked in the cool of the day when God walked through that garden of paradise, the Garden of Eden, which we think was located somewhere between the two great rivers in old Mesopotamia, the Tigris and the Euphrates Rivers. God walked in that garden looking for Adam and Eve. But he couldn't find Adam. So he asked the question: Adam, Adam, where art thou? That is the first question ever recorded. Adam, where art thou? Well, Adam and Eve were hiding behind bushes and figleaves. Adam, where art thou?

Well, Democrats in either the House or the Senate were not in that room. So when their constituents ask, where were you, where were you, Senator GRAHAM? Where were you, Senator BYRD, you who has been in Congress 51 years, where were you then? Where were you on that day?

The Democrats were locked out. We were locked out. We weren't included.

I will tell you one thing. That was never done when I was chairman.

Now we find that the delay in implementing the country-of-origin law is not just for 1 year, as the House provided and the Senate opposed, but 2 years. And that is not all. The House provision only placed a limitation on the labeling requirement for meat products. Now the agreement coming out of conference expands the limitation to all the other commodities covered by the law such as fruits and vegetables. American consumers may have thought they were going to know where their food came from, but the majority has made sure that those facts will remain a hidden secret in the deep freeze.

Also, the 1-year limitation on the FCC media ownership rule was turned into a permanent cap at 39 percent. The practical effect of changes demanded by the White House is to protect Rupert Murdoch's FOX television network and CBS-Viacom from having to comply with the lower 35 percent ownership caps, the congressional version of the bill that was put in place.

The White House is boosting special corporate interests. Why not? Look at the millions that are poured into political coffers by those special corporate interests. The White House is boosting special corporate interests at the expense of the people's interest for balanced news and information. Protections for Federal workers that were agreed to on a bipartisan basis in the public conference that would ensure fair competition with the private sector disappeared in the backroom.

The White House sent its troops to the Hill last week to press the Republican leadership to reject entreaties from Members on both sides of the

aisle to make any changes to this Frankenstein of a bill.

This "my way or the highway" roughshod politics over the principled approach to Congress is incredible, especially from a White House that has done so much to undermine the credibility of this Nation and its Government.

One year ago, the President used the State of the Union Address before this Congress, this Nation, and the world to make his best case for taking the Nation to war in Iraq under the doctrine of preemptive strikes, under the doctrine of preemption.

In the State of the Union Address and in other speeches, he and others in the administration told Congress and the Nation that Saddam Hussein had weapons of mass destruction that were an imminent threat to this Nation. We were told that Saddam Hussein was trying to develop nuclear weapons. We were told that American troops would be received as liberators. We were told that Saddam Hussein was aiding terrorists, such as the al-Qaida. What an incredible tale. What an incredible squandering of the credibility of our Government in the eyes of the world.

For this President, there seems to be no limit to his appetite for rhetoric, no recognition that there is a difference between his rhetoric and reality.

Yes, he promised Americans to leave no child behind, but this omnibus bill would cut funding by \$6 billion below the level authorized for title I in the No Child Left Behind Act which this President signed with such promise in January of 2002. This omnibus bill would leave behind 2.1 million children who are eligible for title I educational services.

The President promised to secure our homeland and yet this bill would cut funding for port security and border security. On November 14, 2002, the Senate passed the Maritime Transportation Security Act without a dissenting vote. The vote was 95 to 0. The bill was signed into law by President Bush on November 25, 2002, during a celebratory White House ceremony. On that day, the President said: We will strengthen security at our Nation's 361 seaports, adding port security agents, requiring ships to provide more information about the cargo, crew, and passengers that they carry.

Despite these requirements, the President has requested no funding for port security grants and this omnibus bill would cut the funding that Congress added last fall. Sixteen million cargo containers arrive in the United States by ship, truck, and rail each year. One hundred forty million passengers travel annually by ship each year. Thousands of employees work at our ports each day. Millions of citizens live in and around our port community. A terrorist attack through our ports would produce billions of dollars of losses to our economy.

Was a thin dime requested by this President? No. No, the President did not request a dime.

On November 19, 2001, the President signed into law the Aviation and Transportation Security Act. The act created the Transportation Security Administration and mandated that all cargo on passenger aircraft be screened. The administration has never requested sufficient funding to meet the goals of the law. In order to bridge a \$900 million funding shortfall that it created for fiscal year 2003, the administration proposed delaying advanced firearms training for Federal air marshals at the same time that intelligence reports indicated an enhanced threat to aviation and the potential for hijacking planes transiting the United States.

Regarding air cargo security, the administration has met the requirement of screening air cargo by expanding a program referred to as the Known Shipper Program. This program does not actually physically screen cargo going into the bellies of jumbo passenger aircraft but relies on paperwork to protect our citizens. Congress added \$35 million above the President's request to enhance the deployment of detection equipment, research other methods to screen cargo and otherwise expand air cargo security. This omnibus bill would reduce that funding.

The Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 101-173, was signed into law by President Bush on May 14, 2002. The act authorized funding for enhanced hiring of immigration inspectors and agents as well as for improvements to immigration facilities. The President did not request the authorized funds to hire additional immigration personnel, nor did he request funds to make the authorized improvements to immigration facilities or to hire the required number of Border Patrol agents. The omnibus bill would reduce funding for Border Patrol efforts.

Just last month, 4 days before Christmas, Homeland Security Secretary Tom Ridge announced that the Nation's terror alert level was being raised to orange. He said the strategic indicator, including al-Qaida's continued desire to carry out attacks against our homeland, was perhaps greater than at any time since September 11. He went on to say that information indicates that extremists abroad are anticipating near-term attacks that they believe will rival or exceed the scope and impact of those we experienced in New York.

The President promised a safer nation when he created the new Homeland Security Department. But his Secretary says we are in greater danger than at any time since September 11, 2001. At the same time, the administration urged Congress to cut funding for Homeland Security.

In May of this year the President signed into law a bill authorizing \$15 billion over 5 years for international programs to combat HIV/AIDS. On July 12, while in Nigeria, the President said: The House of Representatives and

the Senate must fully fund this initiative, for the good of the people on this continent of Africa.

To "fully fund this initiative" requires \$3 billion. The authorization bill, which the President explicitly referenced in his speech, authorized \$3 billion in fiscal year 2004. Yet the President only requested that the Congress provide \$2 billion for the program. This omnibus bill, after the across-the-board cut, would provide less than \$2.4 billion for the Global AIDS Program, over \$600 million below the level promised.

Democratic Senators, including myself, on three separate occasions offered amendments that would have ensured that HIV/AIDS funding reached the \$3 billion level. All three of these amendments were defeated by the Republican leadership working with the Bush administration.

Rhetoric and reality are two different things. Now we understand that the President will be promising to put a man on Mars. Somewhere along the way the tail has begun to wag the dog.

The legislative process is being steered from the Oval Office. The legislative branch is being used not as the Framers envisioned, to serve as a check on the executive branch, but instead as a tool to check off accomplishments on the President's political agenda.

Whose fault is that? Shame on us for letting ourselves be used. Shame on us for letting ourselves be used. Shame on us for putting political party against the best interests of the Nation. Shame on us for putting political party above the Constitution of the United States. This is not the way the Senate should operate.

I fault no individual Senator for bringing us to this point, but I do fault the system that places meaningless message votes and staged photo-op debates before the business of the Nation. I fault politicians for their weakness, for their failure to uphold their oaths to support and defend the Constitution of the United States against all enemies, foreign and domestic.

Shame on us. In my 50 years in this Congress, I have never, never before seen such a Milquetoast Congress, a Congress that would cede power.

This Constitution says Congress shall have power to declare war. Yet this Senate stood speechless—speechless—when we voted in 2002 to shift this power to determine when, where, and what military forces should invade a sovereign Nation. The Senate had little to say.

That was not the Senate that was here when I came here. No, not the Senate that was here when I came here. Everett Dirksen stood at that place. Lyndon Johnson stood at that desk. There was Norris Cotton, George Aiken, Jacob Javits. Those were men. There was Senator Russell of Georgia, who stood at this place, right here at this desk, Richard Russell. Lister Hill stood there. John Pastore of Rhode Island stood here. No, not those men. They are gone.

But the Constitution is not gone. The Constitution is still with us. And many times have I stood at that desk where the Presiding Officer sits today, put my hand on the Bible, as it were, and swore to support and defend the Constitution of the United States—not to support this President or that President, this party or that party. I did not have any oath of that kind. I did not take any oath of that kind. I never will take an oath of that kind.

How many of us can say we have stood by that Constitution? How many of us would have to say: Oh, I have bent—I have bent, when my party, when my President—the President is the President for all of us. He is not just my President.

But I say that we have become far too deferential to all Presidents, too deferential to all Presidents. Presidents are just hired hands like the rest of us. They are here only for a while. Then they go. I have seen 11 administrations go, and I hope I get to see another one. But we act, when we come here, as though we swear to support this President or that President, a President from the Republican party or a President from the Democratic party. Why? They are mere hired hands who are here for a little while, like the rest of us.

No President sends the Presiding Officer here. No President can send that Presiding Officer home. Why so deferential to Presidents?

Under the Constitution, we have three separate but equal branches of Government. How many of us know that? How many of us know that the executive branch is but the equal of the legislative branch—not above it, not below it, but equal? Why do we treat Presidents as though they were kings, clothed in royal purple?

The real losers in this scenario are the American people. They are not well served by a Congress that fritters away opportunity after opportunity to probe, to analyze, to exercise its independent judgment on the urgent issues of the day in favor of rushing to do the bidding of the executive branch. Shame on us. Fie on us.

The people of West Virginia and this Constitution that I hold in my hand have made me a U.S. Senator. No President made me a U.S. Senator. I came to Congress when Harry Truman was President. He did not make me a Member of Congress. Of course, I was indebted to him for coming to West Virginia and speaking on my behalf and on behalf of my colleague, Jennings Randolph, at that time. But I did not expect that to make him my boss. I admired Harry Truman. I did not like him for some of the language that he used in public, but I still admired him, and admire him to this day as a President who had courage. But he was just a President.

So I have served with 11 Presidents—not under any of them. No, no President sends me here. And by what right do the people of West Virginia send me

here if I am going to bow and scrape to a President? They expect me to speak up, and that is what I have tried to do, in the presence of Presidents, yes, but they put their pants on just like I put mine on; the same old way, no different.

Under our Constitution, our Founding Fathers had the wisdom to establish three separate, equal, coordinate branches of Government. That is under this Constitution. This Constitution—perhaps one does not think about it often, but when one stops to think about it, this Constitution has something to do with every minute, every hour, every day of every life in this country in one place or another, and in some instances more than one place.

This Constitution impacts your life, your life, and your life. Every day that you are here on this planet, this Constitution has a bearing on it. And then some would treat this as a piece of paper and put political party above the Constitution of the United States. When I do that, send me home and say: Good riddance.

This is the Constitution of the United States. Many times I have sworn by oath before God and man, with my hand on the Bible, the King James version of the Holy Bible, to support and defend this Constitution. Yet we treat it as a piece of paper. We use it only when it is of a particular benefit to us. But every day, in some way or in some ways, this Constitution bears upon your life. It may be in the delivery of your mail. It may be in the hard surfacing of the roads upon which you drive. It may have something to do with the flights that you are about to depart upon. Yes, it is this Constitution.

In this country, we don't say: God save the King. God save the King. God save the President of the United States. No. We say: God save the Constitution of the United States. This Constitution saved Congress from its error when it passed the Line-Item Veto Act. This Constitution did that.

Under the Constitution, Congress writes the laws. The President executes the laws. Under the Constitution, the power of the purse rests here, right here—not downtown, not down at the other end of the avenue, but here.

Most of the people who were in the Thirteen Colonies, in the 13 States, when the Constitution became a constitution, were British subjects. It took hundreds of years and blood spilled at the tip of the sword for Englishmen in 1688 to write that meetings of Parliament that should be held often, that there would be freedom of speech in the Parliament and in the House of Commons. Those were the men who placed the powers of the purse in the hands of the elected representatives of the people of England in Parliament. That is where the power of the purse rests, here in the legislative branch. We ought never to let the executive branch forget it. Yet we cower. We act like poodles when it comes to standing up

against the Chief Executive of the United States.

Who is he? With all due respect, whether he is Republican or Democrat, this is the Congress of the United States. This is the people's branch, this body and the other. Under the Constitution, the Congress determines how to write our laws, how to protect Members' rights to debate the important issues of the day. This omnibus bill leaves those pillars of our constitutional system in shambles. It is our duty as the people's representatives to protect those pillars of our constitutional system of government.

In 1999 and in the year 2000, when President Clinton, a Democratic President, a President of my own party, supported efforts by the Republican Congress to produce Omnibus appropriations bills, I came to this floor to decry our loss of our right and our duty to write legislation. I came to this floor to stand up for Congress's power of the purse. It made no matter to me—not any, no matter—that this was a Democratic President calling for omnibus spending legislation. I stood up for the rights of this Senate as I do today.

In 1993, there was a great effort to include President Clinton's comprehensive health care reform plan in a reconciliation bill. Proponents of the President's proposal hoped that such an approach would shelter the proposal from extended debate in the Senate. My own majority leader, George Mitchell, came to me. I said, no. My own colleague from West Virginia in the Senate pleaded with me. I said, no. President Clinton, a Democratic President, called on the telephone, called on me to support this effort. I said, no. I said, no. Without regard to party, I felt compelled to protect Members' rights to a full debate.

I said: This is a comprehensive health bill. The people need to know what is in it. We Members of the Senate need to know what is in it. That is why we have the Senate, to debate and to amend. No.

And so I turned my face like flint to the request of my own friend and the President of my own party. No.

Did he think less of me? I doubt it. He thanked me. He understood what I was saying. I will say it again. How many on that side would say that to a President of their party? But with President Bush, he insists that members of his party march with him step by step. I can remember a great Republican Senator who refused to march step by step. That was Senator Mark Hatfield. He was scorned by many on that side of the aisle because he stood alone against a political party, his party. He was no coward for doing that. He was a man.

President Bush insists that members of his party march with him step by step. Today, on the other side of the aisle, voices for a strong and equal Congress fall silent.

Last week Senator FRIST wrote to Senators and urged them to vote for

the omnibus conference report because if the omnibus fails, then the only alternative, he said, is a full-year continuing resolution that would force the agencies for the seven outstanding appropriations bills to operate at last year's level. He argued that such a continuing resolution would produce deep cuts for food safety, veterans medical care, highway funding, and the Global AIDS Programs.

However, the Senator presents the Senate with a false choice. If the omnibus is not approved, the Senate has other options to move forward. If the only alternative is a full-year continuing resolution, then that is the choice of the Republican leadership. It would be another example of putting political posturing before the needs of the American people.

There is a clear alternative, and that is to sit down and work out a compromise that can overwhelmingly pass the Senate. If our distinguished and illustrious majority leader, Mr. FRIST, had the will to do so, such negotiations could be completed, who knows, maybe even in 1 day. However, in its current form, I cannot vote for this bill. I cannot vote for this conference report that so ravages our constitutional process and puts corporate interests ahead of the people's interests. I cannot vote for a bill that undermines our credibility, undermines the credibility of the United States Senate with the American people. I urge Members to vote no when the Senate votes on the adoption of the conference report.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, it is a tough act to follow of the Senator from West Virginia. Is there any specified allocation of time for debate this afternoon?

The PRESIDING OFFICER. No special allocation of time, except that Senator MCCAIN is to be recognized at 2 o'clock for an hour.

Mr. DURBIN. I thank the Chair.

Mr. President, I thank the Senator from West Virginia for his eloquent words, which I followed on the floor and through the television before I arrived on the floor. It is always a pleasure to hear him speak to the issues that we are challenged with as a nation.

Last night, I joined many Senators and Congressmen to walk across the Rotunda to attend the 21st State of the Union Address, which has been my honor to witness as a Congressman and as a Senator, to be on the escort committee to bring in the President for this historic moment and to hear the President's words as he addressed America, as he does each year. It is a rare chance for him to speak unencumbered to the Nation directly and to really express the feelings in his heart.

Part of what the President said I thought was particularly timely and poignant. It drew bipartisan response

and applause—particularly the part where he saluted the men and women in uniform. We have many debates on foreign policy here. Senator BYRD and I view it the same way, that perhaps our country is on the wrong track when it comes to this policy of preemption and going it alone in the world. Having said that, we both understand, as every Member of the Congress does, there are men and women in uniform who are literally risking their lives at this moment for this country. While politicians and elected officials debate the policy, we should never forget the courage, sacrifice, and dedication of those men and women in uniform, how much it means to their families that they know we stand behind them and we will not deny them the resources they need to perform their mission safely and to come home safely and as quickly as possible.

I point out one aspect that has come to my attention over the 2-month break when the Senate was in recess. I joined a couple Senators and I went out on my own to visit Walter Reed Hospital last November and meet with these wounded soldiers. It is a wonderful thing to see these brave young men and women. Also, it is sad to see some of the injuries they have sustained. Most of them wear ceramic vests that protect them in combat, but they don't protect their limbs. Many of those there are amputees who have lost a hand, an arm, legs, or, in the case of one soldier, both hands, or suffered a head injury.

Having spoken to them and asked them the circumstances of their injury, I usually said: Is there anything I can do for you? It was interesting to me how many had the same response. It wasn't personal. They didn't ask me for a favor. They said: Don't do me a favor, but do a favor for the men and women I served with. We need to have more protection in combat, particularly with Humvees, which are today's jeeps that are so prevalent in the war in Iraq. Humvees were built to be light and fast for a desert war, and now they perform a different function. They move troops through Baghdad and Fallujah, which are dangerous areas. Sadly, many of these Humvees have canvas sides. If one of these terrorists fires a rocket-propelled grenade at it, it whistles right through the vehicle causing great injuries and damage in the process. The same thing is true with the homemade bombs. So the wounded soldiers at Walter Reed said time and again that they need more armor-plating on the Humvee vehicles.

I thought this was something a Senator ought to look into. So I came back to my office and contacted the Department of the Army and said: How many Humvees in Iraq today don't have armor-plating? They said that 8,500 do not. So I said: Is it a priority to make armor-plated doors for these? They said it is the highest priority. They said: Senator, there is good news. Half of them will be built in your State at

the Rock Island Arsenal, which has served America since the Civil War. I knew the men and women there were anxious to get involved and to prove themselves and to serve our Nation again, as they have time and time again in times of conflict.

During the break, I went to the Rock Island Arsenal and saw the first two armored doors for Humvees come off the assembly line. The employees were working around the clock and could not have been prouder. I said to the officer in charge at the Rock Island Arsenal: This is great. You are supposed to build about 8,000 or 9,000 of these armor-plated doors. How long will it take you to get these 9,000 armor-plated doors into Iraq on the Humvees? He said: Senator, if we work night and day, we can get this done in 2 years. Two years.

I thought to myself, what am I missing here? In World War II, we would build a bomber in 72 hours. We would build a ship in 30 days. Why is it going to take 2 years to build the armor-plated doors for the Humvees? He said: I am sorry to tell you that there is only one plant left in America that makes the steel that can protect these soldiers with armor plating in the Humvees—one plant left in America. I thought about that last night when the President said to us that jobs are growing in America—manufacturing and industrial jobs are growing in America. I have to say to the President, as I look at Illinois, that is not the case. We are losing jobs. We are losing manufacturing jobs. We have lost 20 percent of our manufacturing jobs in the last 5 years and continue to do so.

Many jobs are going to China. China is a country where jobs are growing but, sadly, at the expense of American workers. China has an unfair trade policy related to the currency valuation of their local currency.

Now, the Secretary of the Treasury, who was there last night, protested this in China, but they have done nothing about it. So they have a 15- to 40-percent price advantage over American manufacturers. What it means is that manufacturers, large and small, are losing business to China. So when the time comes, when we need a steel mill to produce the armor for the Humvees so our sons and daughters come back with limbs intact and safe, we find ourselves at the mercy of these foreign producers.

Today, for every dollar of goods exported from the United States to China, we import \$6 worth of goods from China, and one company in America—one company alone—imports 10 percent of all of the Chinese exports to the United States. One company sells 10 percent of all of the goods and products sent by China to the United States. That company is Wal-Mart. Wal-Mart, yes. It is in your neighborhood and in your hometown.

A few years ago, they proudly said "made in America" at Wal-Mart. But it doesn't say that anymore. Last week,

if you watched the cable channels, you saw Lou Dobbs talking about exporting America. Frankly, that is a sad reality today.

So when the President talks about all the new jobs coming into America, I don't see it. For my money, a jobless recovery is no recovery at all. What good is it to talk about productivity? What good is it to talk about economic growth if we have lost 3 million jobs under the Bush administration? That is a fact of life.

I told you the story of the Humvees. I will tell you one other.

In my apartment in Chicago, at 4 o'clock on Saturday, I received a phone call. It is interesting that I received a similar call 3 weeks before. The voice on the other end of the phone said: Mr. DURBIN, this is Nancy, and I am happy to inform you that your Discover Card is on the way to your apartment.

I said: Nancy, I didn't order a Discover Card.

She said: Yes, but you have qualified for one and we are going to send you a credit card.

I said: Nancy, may I ask you a question? Where are you calling from?

She said: Delaware.

I said: What city in Delaware?

She said: Just a minute.

I heard papers shuffling. I said: New Delhi?

She said: No, Bangalore.

As you know, that is a city in India. I tell you those stories because I think they demonstrate the anxiety and concern of Americans from one coast to the other.

The President may believe that we are deep into a recovery. The President may see new jobs coming, but America looks at the current evolution of our economy with concern. We are giving up our basic industries. We are giving up manufacturing to the Chinese, and now we are giving up service jobs to India and other countries.

IBM announced 4,000 jobs will be lost in the United States for computer programs that will be sent overseas to India. If you buy a Dell Computer and you need instructions on setting up your computer and you call the 800 number, you will generally speak to someone in India.

The question that raises is this: What will be the job for the next generation of Americans? What occupation or profession would you recommend to a young person for a future in America?

There are some that are obvious, but when you look at how we have built this country with a strong middle class, raising good strong families with strong values, you have to wonder, with the challenges we are going to face in the years ahead, whether this administration and this Congress are looking at the state of the American economy honestly.

What was President Bush's proposal last night to deal with the future of America's economy? He made it clear. He believes that if you make the tax cuts for the wealthiest people in America permanent law, then, in fact, we



will have a strong economy. In other words, if you will give more money to the wealthiest people in America, somehow the economy lifts and everyone will succeed.

History is not on his side. In fact, this anemic recovery in which we are presently involved is proof positive that his tax cuts did little or nothing to stimulate this economy and creating a deficit of historic proportions. This President took a surplus in the Treasury and turned it into the biggest deficit in the history of the United States. He took over from an administration that had created over 20 million new jobs, and this President, unless something dramatic happens in the next few months, will go down in history as having lost more jobs under his administration than any President since the Great Depression—3 million jobs lost in America. And his answer to get America back on its feet and working again: Give the wealthiest people in America a tax break.

The President, when he talks about the tax cuts, zeros in on the \$300 for individuals, \$600 for families, the marriage penalty, but he ignores the biggest tax breaks, which are not included in that group but go to the wealthiest people in this country. Those are the ones who have brought us into this deficit situation.

To make matters worse, the conference report to accompany the Omnibus appropriations bill, which we have before us, includes a provision which says when it comes to those currently working in America, people who are struggling to keep their jobs and to keep their families together, this bill contains a provision which will eliminate overtime pay for 8 million Americans.

Mr. President, 8 million Americans today working overtime hours—away from their families, to make ends meet, to put some money away for college education, to deal with medical bills they can't handle otherwise—because of language insisted by the Republican leadership in the White House and in the Congress will lose their overtime pay.

That is the record of the Bush administration when it comes to jobs: 3 million jobs lost; 8 million working Americans denied overtime pay.

What does it mean? It means these men and women who are working these jobs will be told by their employers: You will show up and you will work instead of 40 hours this week, you will work 50 hours this week, and the extra 10 hours you work, you will be paid the same hourly wage, and if you don't like it, leave.

Perhaps that is the President's vision of America. From my point of view, that is not a vision that most families would appreciate. If we truly value work and we truly value families, wouldn't we take a different approach?

Didn't we hear the President last night talk about the family values of America and protecting those tradi-

tional values? While he spoke, we were considering a bill that says for 8 million Americans, the likelihood that your family will succeed is diminished, and it is reduced because we believe employers, at least those who support this bill, believe that employers should make more money at the expense of their employees.

We have had overtime pay since 1938. The Fair Labor Standards Act required employers to pay time and a half, and usually Presidents, Democrats and Republicans, would extend overtime protection and overtime benefits to more and more employees. This President will go down in history as the first to take overtime pay away from working Americans—8 million Americans.

The administration's proposal would strip 8 million workers of their overtime rights, including 375,000 workers in my State of Illinois. For workers who receive overtime pay, that overtime compensation usually accounts for 25 percent of their paycheck. The administration's proposal would slash the paychecks of 8 million hard-working Americans by 25 percent.

I haven't spoken about increasing the minimum wage in this country, which this administration has steadfastly opposed and Republicans in Congress have adamantly opposed. So at \$5.15 an hour, more and more low-income workers find themselves falling behind and have to take a second job.

I went to a high school in Du Page County over the break. Du Page County is a great diverse, strong, and generally prosperous county in my State, just west of Chicago. When I sat down with the educators, we looked at No Child Left Behind test scores, and I said: Why is it that only 92 percent of the students took the test for No Child Left Behind at this high school?

The principal said to me: Senator, a lot of our kids are from poor families, single parent families, and they have brothers and sisters. If a little brother or a little sister gets sick and can't go to day care that day, mom is going to have to stay home from work and give up her paycheck or that older brother is going to have to stay home and watch the sick baby. That is what happens. He said that is reality.

Think about that kind of life where the sickness of the baby keeps an older brother out of school; where the mother, making \$5.15 an hour, doesn't work an 8-hour day, but perhaps a 12- and 14-hour day or, if she is lucky, she has a job that used to pay overtime for those extra hours and now, because of the Bush administration's proposal, she is about to lose her overtime. She is struggling to keep her little family together under extraordinary circumstances, and we make it worse.

We do not increase the minimum wage. We do not protect her right to earn overtime pay, which has been on the books for over 65 years in America. Is that an administration with family values, sensitive to families and what they face?

What kind of employees will be hit hard by the President's determination to cut overtime pay? Let me give you a few categories: Police officers, firefighters, and safety coordinators. The International Union of Police Associations estimated this proposal will take overtime pay from 50 percent of those law enforcement officers currently guaranteed overtime. A minimum of 200,000 law enforcement officers will lose their overtime pay because of this appropriations proposal that came to us from the Bush administration.

I can go through the list: Prison guards from my State will no longer receive overtime pay; first responders, nurses, medical assistants, social workers, computer technicians, engineering technicians—the list goes on and on.

I think the list tells a story. It is one thing to talk about the goodness of America and the confidence we have in our future, and quite another for us to pass legislation, such as included in this appropriations bill, which destroys the confidence of working families in this Congress and this administration, unwilling to stand up and fight for them defending their rights to keep their families together.

Let me speak for a moment about education because at the heart of the issue of tomorrow's generation and their jobs is the question of education and training. The President made a very modest proposal last night to help community colleges. I thought it was good. When we assess the value for each community college, it is going to be symbolic, as most things are from this administration when it comes to helping America. It won't be the billions of dollars we are sending to Iraq. It will be \$230 million, \$240 million which is going to be allocated to community colleges. Mr. President, \$230 million is hardly going to change education in America when we consider we are a nation of roughly 300 million people.

When we take a look at No Child Left Behind, we may note that this bill we are about to pass provides the smallest increase in education funding in 8 years, and it shortchanges No Child Left Behind, the President's premier policy on education, by \$6 billion under the authorized funding level.

So we have said to schools, test your kids, and the President repeated it last night, continue to test, we want to know how you are doing. That is valuable. That is the diagnosis. But when it comes to the treatment, when it comes to tutoring, mentoring, after-school programs and summer school programs, this administration refuses to put the money on the table. They will identify the problem but they will not invest in solving the problem. In fact, what they have created is an unfunded mandate on schools at the absolute worst time possible. Where States are struggling to make ends meet, where local property payers are pushed to the limit on their property taxes, the President has imposed a mandate on



the schools and refuses by \$6 billion in this bill to provide the funding the schools need to succeed.

So what will happen? Tests will be taken and tests will be reported, both within the Department of Education and publicly. Schools which people respected will now be branded as failing schools. Schools which frankly are doing a good job will find that if one group of students, for example, the kids in the special education class, who have special physical and mental challenges, cannot meet the test scores we have mandated in No Child Left Behind, the school will be graded as a failing school.

Imagine, you and your husband, your family, have made a sacrifice to buy a home in a very expensive subdivision which you know to be safe and near a good school, so that there is going to be a great education for your kids. You are starting to make the mortgage payments, it is not an easy thing to do, and you pick up the paper and you say, did you realize the high school our kids are about to go to has been graded as a failing school?

That is going to happen. It is going to happen across Illinois. It is going to happen across America. When it comes to the resources and money to help those schools and to help those students, this administration refuses to put the money on the table. I think that is unfortunate and tragic, and it hardly suggests that this President is looking forward to the next generation.

The same President who a week ago looked up to the heavens and said the vision for America is manned space flight to Mars is a President who is not looking around America at the neighborhoods and towns that need a helping hand, that need more jobs, that need better schools, and need affordable health insurance. Had that same President, instead of casting his eyes to the heavens and outer space, looked to our Nation and said, in the next 10 years we are going to bring America's schools up to the highest world quality standards, and if it takes the trillion dollars that is necessary, we will spend it, that President would have been applauded across America. Instead, he projects someone in a manned space flight to Mars that will cost us \$1 trillion.

I am not against the space program. Many good things have come from the space program, and they continue to come from the space program, but to think that we are going to look beyond Mother Earth, look beyond our own home into the heavens to spend a trillion dollars just strikes me as a complete misstatement of priorities for America.

In the few minutes I have remaining, I will mention two or three other things I find troublesome in this bill. One of the major disappointments was the deletion of funding in the Commerce-Justice-State-Judiciary appropriations for the Voice of America and Radio Free Europe/Radio Liberty broadcasting for Eastern Europe. The

Senate bill included this funding, as did the Senate version of the authorization bill: \$9 million for broadcasts to Estonia, the Czech Republic, Hungary, Lithuania, Poland, Bulgaria, Latvia, Romania, and Moldova. Unfortunately, this bill will cut off those broadcasts, and that is not the right thing to do. These are new democracies. They are still subject to instability. There is still gang and Soviet influence. I refer to the old Soviet gangs that still are alive and well and reborn in the form of syndicate operations. These democracies need the help of Radio Free Europe. I think putting that voice, as well as Radio Liberty, in a broadcast is an important thing to strengthen those democracies. Unfortunately, it was cut.

Then, of course, there is the provision in this bill regarding one of the controversial rules of the Federal Communications Commission. Do my colleagues think it is a better country if one company owns more and more television and radio stations? I do not. I think the diversity of message, the opportunities for Americans to hear different points of view, is really kind of key to our democracy. Yet, despite our votes on the floor of the Senate, at the last minute Chairman STEVENS and the White House put a provision in this appropriations bill which allows a greater concentration of ownership of television stations.

The obvious question is: What is that doing in an appropriations bill? The obvious answer is: The special interests won and they won big. Viacom was a big winner. Rupert Murdoch and Fox Broadcasting were all big winners by this provision being slipped in the bill. It is no surprise that some of these conglomerates have a conservative bent to them and agree with the President's party. Well, they were handsomely rewarded in this appropriations bill.

The last point I will make is that of all of the things in this bill which will make life tougher, more difficult and challenging in America, there is one that is very basic. When one turns on the television news tonight, what is likely to be the lead story? Well, in Chicago, sadly, it is likely to be a violent crime, maybe a murder. We are showing some improvement there. We are reducing violent crime, but it is still a national scourge. Unfortunately, it is the result of the fact that guns often end up in the hands of the wrong people.

Under the Brady Handgun Violence Prevention Act, firearm dealers are prohibited from transferring firearms to anybody until there has been a search in the National Instant Criminal Background Check System and it is determined that selling this gun to this person would not violate the law. The kind of people who would be prohibited from buying guns are obvious: convicted felons, somebody convicted of a crime of domestic violence or under a domestic violence restraining order, or a fugitive. We do not want to sell guns

to people who have demonstrated that they misuse them. That is a smart thing to do. So we submit the name of the person to the NICS system for a computer check to see if this person would be prohibited from having a firearm. If so, then we do not sell them the gun.

In addition, under the current regulations, the Department of Justice retains records of approved firearm sales for up to 90 days. If during the course of those 90 days, it obtains information that a gun has been sold to someone improperly, we are going to go get the gun.

So I asked the General Accounting Office what would happen if the Department of Justice was required to destroy these computer records of gun purchases within 24 hours. In other words, the Department of Justice is given only 24 hours to obtain additional information on a person's background, and they were not given the full 90 days that they have under the current law. What if it is limited to 24 hours? The General Accounting Office did a study for me. They came back and said the FBI would lose its ability to initiate firearm retrieval actions when new information reveals individuals who were approved to purchase firearms should not have been. Specifically, the GAO said during the first 6 months of the 90-day retention policy, the FBI used retained records to initiate 235 firearm retrieval actions, of which 228 could not have been initiated if there were a next-day destruction requirement.

Let me boil this down. If I want to buy a gun and I pass through the computer check, they have 90 days to obtain additional information regarding whether I should have been able to buy the gun. If they are told they have only 24 hours to gather this information, it means that 228 guns in a 6-month period would be given to convicted felons, people guilty of domestic violence, and fugitives, exactly the wrong people in America to have guns.

Now, who in the world would want to limit the ability of the Government to check on someone's background to make sure that criminals did not buy guns? One special interest group—the National Rifle Association. And they won, in this bill. They have a provision in this bill which will prohibit the FBI from obtaining information on a purchaser's background more than 24 hours after a sale is approved. What it means in this case is 228 felons and other prohibited persons in a 6-month period would end up with guns on the street.

Does that make you feel safer, America? It doesn't make me feel safer at all. It is the kind of mindless pressure by a special interest group that is being paid off for its political support with this provision in the appropriations bill, and that makes no sense at all. It is not going to make the streets of my State any safer. It isn't going to make it safer for the policemen who

get up every morning, who put that badge on over their heart and risk their lives for us every single day. It isn't going to make it safer for our children who are walking home from the bus or from the CTA train. It is not going to make it safer for America.

But there are smiles on the faces of the special interest group, the National Rifle Association. They won in this appropriations bill. They were able to limit the opportunity for Government to do its work, to keep guns out of the hands of criminals. That is another unfortunate outcome of this legislation.

So we will face this Omnibus appropriations bill after having defeated a motion to close down debate yesterday. I hope in the process a lot of Americans will pay close attention. This is one of the latest times I can remember major appropriations bills being enacted since I served in Congress. The fact is, the longer the bill languishes, the more likely it is subject to mischief. That is what happened here. Time and time again we saw the overtime pay issue, the issue of media ownership concentration, the issue of the background checks on guns, as well as the issue of country-of-origin labeling—all of these became victim to this debate that went on and on, on the appropriations bills, and ultimately the special interests won, Americans lost, and American families lost as well. I yield the floor.

The PRESIDING OFFICER. The distinguished assistant minority leader.

Mr. REID. Senator McCAIN is scheduled to be here at 2 o'clock, and he has indicated he will be here, so I suggest the absence of a quorum pending the arrival of Senator McCAIN.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, we have been advised by the majority cloakroom that Senator McCAIN will not be here for a few minutes. We don't want him to lose any of his hour. He told me how important it is to him to have that hour. So I ask unanimous consent the Senator from Iowa be recognized. When Senator McCAIN does appear on the floor, Senator HARKIN would yield to him.

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

Mr. REID. I ask unanimous consent that Senator McCAIN be allotted his full hour.

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

The Senator from Iowa.

Mr. HARKIN. Mr. President, I thank the Senator from Nevada for asking for this consent. Certainly I will yield to the Senator from Arizona when he arrives. I know he had time reserved.

I listened with great interest to the President's State of the Union speech,

hoping to hear what kind of plans he had to help America's working families in the struggling economy. Unfortunately, I didn't hear anything to help the millions of people who are out of work and have given up looking for work because there are so few jobs. I think this administration needs to wake up and come up with a real jobs plan to help America's families.

We need to extend emergency unemployment insurance for the hundreds of thousands of people who paid into unemployment when they were working but months after losing their job still can't find work.

We need to raise the minimum wage, which has not been increased in over 6 years.

And the administration needs to immediately withdraw its proposal that would deny millions of workers their overtime pay. The President's proposal will deny overtime pay to 8 million workers. Five months ago the Senate voted 54 to 45 on my amendment to block the administration's effort to take away overtime pay to 8 million Americans. The House soon followed, 223 to 201. The Senate spoke again yesterday in its vote against cloture. This should not even be an issue on the Omnibus appropriations bill that is before us today. The Congress of the United States spoke up, clear as a bell, and said: No, the administration must not strip overtime rights from 8 million American workers.

But, as we all know, the administration refused to accept the will of Congress. The administration ordered its foot soldiers in the House to strip this provision from the omnibus. Senator SPECTER and I fought to keep it in, but the administration refused any cooperation or compromise. In the end, just like that, without any vote in the conference, the administration nullified the clear will of both Houses of Congress and the American people by sticking to his position to deny overtime pay rights to 8 million Americans.

This is a clear abuse of power by the administration and part of a pattern we have seen from this President, time and time again. The administration seems to believe in government by one branch, the executive branch. When there are no checks and balances, the result is bad public policy, and that is exactly what we see here today.

Mr. President, I see the Senator from Arizona has arrived. I will yield the floor and resume my talk on the overtime provisions later on sometime today.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Arizona is recognized for 1 hour.

Mr. McCAIN. I thank my colleague from Iowa and welcome him back from a very interesting time.

Mr. President, here we go again, another Omnibus appropriations bill, and this one takes the cake. Obviously, the New Years Eve parties didn't end for Congress on January 1. We are on a spending bender and this bill is ample

proof of it. I think we have a new phrase in the lexicon of description of the way the Congress does business: Another drunken sailor spending spree embarked on by the Congress of the United States to the detriment of our children and our children's children.

I haven't been around here as long as many others, but I have never seen, nor do I believe history will record, such a rapid transition from a period of surpluses as far as the eye could see, to now commitment on the part of the administration to cut the deficit in half at some time in the future. Multitriple-dollar surpluses to multitriple-dollar deficits, and you would think we were still in a period of surpluses. If you look at this legislation, it is a living, breathing argument that this system is broken, the way we do business. Spending is out of control and we are mortgaging the future of our children and our grandchildren, and there is no way that Medicare and Social Security can be viable when we are amassing these kinds of outrageous processes. I say shame on this body, shame on the appropriators, and shame on us because, on Thursday, we will, after a vote of dissatisfaction, now pass this outrageous spending bill.

Americans have heard much about the growing problem of identity theft. We have before us the most costly case of identity theft imaginable. It appears that the big spenders in this body have all but stolen the credit card numbers of every hard-working taxpayer in America and have gone on a limitless spending spree for parochial porkbarrel projects, leaving Americans to pay and pay.

As I will point out later in my statement on such programs as NASA, some of these cuts are dangerous.

Cuts in the International Space Station in the name of porkbarrel spending is endangering the very lives of our astronauts. Policy changes that have to do with fundamental changes in media ownership, in fishing, and in other areas that have been inserted in this bill are absolutely outrageously in violation of Senate rules, I might add.

Please join me as we walk through this shopping mall. On the right, we have \$1.8 million for exotic pet disease research in California. On your left, you will find \$50 million for an indoor rain forest in Iowa—\$50 million for an indoor rain forest in Iowa? Give me a break. On your left, in front of us, you see \$250,000 to build an amphitheater park in Illinois.

It is time we put an end to this theft. I am sorry we have to call it theft but that is how I see the situation.

The sum of these political indulgences is enormous and growing and amounts to the theft of our future and the theft of our economic recovery.

Nearly 1 year ago I stood here and spoke about the 2003 Omnibus appropriations bill. At that time, I said our current economic situation and our vital national security concerns illustrate that we need now more than ever

to prioritize our Federal spending. Obviously, it had no effect.

Let me remind my colleagues that we are nearly 4 months into fiscal year 2004 and still without 7 of the 13 annual appropriations bills. This has become an unacceptable practice. Less than a year after passing one monstrosity, we are poised to do it again as if it should now be our standard operating procedure. But far worse than the breadth and timing, we have before us a bill loaded with special interest porkbarrel projects and legislative riders that have no business in this or any other spending bill.

It is no accident that we are dealing with this bill in an election year. In fact, I strongly suggest we change the name of this bill to "The Incumbent Protection Act of 2004." Forget about the Patriots versus the Panthers in the Super Bowl next weekend. We are right in the middle of the Super Bowl of pork. C-SPAN viewers have seats at the 50-yard line. It is Congress versus the American taxpayer, and sadly we already know the outcome of this game. The taxpayer will be the loser.

We have before us today a bill that incorporates 7 of the 13 annual spending measures totalling a whopping \$820 billion chocked full of porkbarrel spending and major policy changes.

The Kansas City Star recently reported, "Enough pork is layered into the spending bill that even the Missouri Pork Producers Association is in line for \$1 million."

There is over \$11 billion unrequested, unauthorized, run-of-the-mill pork projects inserted in the 1,182 pages of this conference report.

Let us talk about some of the interesting provisions: \$200,000 for the West Oahu campus of the University of Hawaii to produce the "Primal Quest" film documentary.

I am sure my colleagues will again be surprised at the number of projects that go to the States of the senior members of the Appropriations Committee, Alaska, West Virginia, Mississippi, and Hawaii: \$225,000 to the Wheels Museum in New Mexico—a wheels museum in New Mexico; \$7.3 million for Hawaiian sea turtles; \$6 million for sea lions in Alaska; \$450,000 for the Johnny Appleseed Heritage Center in Ohio; \$100,000 to the State Historical Society of Iowa in Des Moines for the development of the World Food Prize; \$200,000 to the Rock and Roll Hall of Fame and Museum in Cleveland, OH, for the Rockin' the Schools education program.

As a fan of rock and roll, I can certainly see why that Rockin' the Schools education program would be worthy of \$200,000; \$1 million for the continued threat of the Mormon cricket infestation in the great State of Utah.

Here are interesting ones: \$450,000 for an Alaska statehood celebration and \$225,000 for an Hawaii statehood celebration. If I were the Senator from Hawaii, I would certainly be angered that

I have been shorted \$225,000 to celebrate my statehood. Hawaii became a State in the same year. You would think they would want to equalize that. I am sure they will fix it in a later appropriations bill knowing the way, in the case of Alaska and Hawaii, that one hand washes the other; \$175,000 to a city in Missouri for the painting of a mural on a flood wall. That must be one heck of a mural; \$90,000 for fruit fly research in Montpellier, France.

Given the closeness of our relationship with the French, I can certainly understand why we would want to send \$90,000 over there to help get rid of that fruit fly in Montpellier.

But back to home, \$225,000 to Traverse City, MI, for the restoration of an opera house. Opera lovers rejoice; \$250,000 for the Alaska Aviation Heritage Museum. Alaska is known for a lot of things, but being the hotbed or the birthplace of aviation is not one that I knew of, although over the years I have grown to be more and more aware of the critical needs of Alaska for Federal funds for every conceivable purpose; \$200,000 to the town of Guadalupe, AR, for the construction and renovation of a shopping center. I will have to go out there and see it. It is not too far from my home; \$325,000 to the city of Salinas, CA, for the construction of a swimming pool.

Some of my colleagues may have read about this kind of interesting thing. It appears that a Member of the other body had some pangs of conscience because he dropped a frog into the swimming pool, or something like that. But whatever, the city of Salinas will have a new swimming pool.

And \$100,000 to the city of Macon, GA, for the renovation of the Coca-Cola building. I can certainly see why the Coca-Cola people couldn't arrange for that. They are an impoverished corporation, as we all know; \$100,000 to the city of Atlanta for the renovation of Paschal's restaurant and motel. I am sure there is great historical significance associated with Paschal's restaurant and motel down there in the impoverished part of Atlanta; \$900,000 to an economic development association in Idaho to continue the implementation of the Lewis and Clark Bicentennial commemoration plan; \$175,000 to the city of Detroit for the design and construction of a zoo. The city of Detroit certainly wouldn't want to have to pick up any of that tab; \$238,000 to the National Wild Turkey Federation. I wasn't sure whether this was the animal or the beverage. But either way, \$238,000 to the Wild Turkey Federation will, I am sure, be wisely spent, and perhaps that would reduce the cost per bottle; \$200,000 for the city of North Pole, AK, for recreational improvements.

I know it has been a bad Christmas season for some, but you would think the elves and others might not need \$200,000 for North Pole, AK. But one never knows, does one? The condition

of the elves and Mrs. Claus are generally updated only around Christmas-time. But it has come a little late this year. I will have to ask my staff to find out the total population of North Pole, AK, although counting nonpersons, I am sure, would enlarge the census there. There is \$100,000 for restoration of the Jefferson County Courthouse clock tower in Washington State. That was under the category of economic development. I imagine everyone knowing what time it is would probably encourage efficiency there.

There is \$220,000 to the Blueberry Hill Farm in Maine. They are getting their thrill on Blueberry Hill. I almost did not use that one, it is so schmaltzy.

While many of these projects may sound comical, they illustrate a badly broken system in need of serious and comprehensive reform. The HUD portion of this bill contains an account that is perhaps the best evidence that this process is completely broken and out of control. The appropriators included \$278 million in this bill for so-called "economic development initiatives." Every single dime of that \$278 million was served up as pork. There were 40 pages of report language. The appropriators dished out 902 earmarks for everything from theater renovations in Jenkintown, PA, to quarry updates in Nome, Alaska.

Excuse me, North Pole, Alaska. The population in 2000 was 1,570, so \$200,000 is a tidy Christmas present.

Back to the 902 earmarks, from everything from theater preservation to quarry updates in Nome, Alaska. Again, somehow Alaska comes back and back and back and back throughout. I wonder how the people in Alaska feel about being put on welfare.

Sadly, the EDI account in the HUD appropriations bill has become nothing more than a slush fund for the appropriators, completely eliminating any competitive or merit-based determination by the Secretary of Housing and Urban Development. The only word that comes to mind to describe this practice is "shameful."

At the same time, I will comment about some language in the statement of managers language accompanying this conference report that offers a more appropriate approach. Many of the accounts throughout the Department of Justice portion of this bill contain language that allows Federal officials, Governors, and other State and local representatives some discretion in awarding the appropriated funds. While the statement of managers names specific entities in connection with the Department of Justice grant, it also states that funding should be awarded if they are warranted after a proper review. Unfortunately, that kind of language is missing throughout the rest of this legislation. I hope the agency officials charged with reviewing these proposals will employ a modicum of fiscal restraint in some projects mentioned, such as \$2 million for the First Tee Program, which teaches

young people how to play golf. I know the Presiding Officer is an avid golf fan and has been to many parts of the world in order to enjoy the game of golf, but I don't think even he would think it is justified in this period of multitrillion dollar deficits to spend \$2 million for the First Tee Program.

As inappropriate as the earmarks are, I am perhaps more dismayed at the inclusion of some major policy changes in the bill. Every member of this Chamber knows it is a violation of Senate rule XVI to legislate on an appropriations bill, the most often violated rule I know of in the Senate. Moreover, every Member knows it is a violation of rule XXVIII to add new provisions in conference that have not been included in either House or Senate bill sent to conference. Sadly, every Member knows this omnibus violates those rules. The inclusion of special interest legislative riders on a must-pass spending measure is not only a corruption of the proper process, it is irresponsible and an affront to good government.

I turn first of all to Section 629, the Commerce-State-Justice division of the omnibus. The provision would undo the Federal Communications Commission's June 2 decision to incrementally raise the national television broadcast station ownership from 35 percent to 45 percent. Instead, the provision would set the ownership cap at 39 percent. I strongly object to the inclusion of this provision for both procedural and substantive reasons. Procedurally, this is a blatant attempt by the appropriators to usurp the jurisdiction of the authorizers. I have not supported the use of the appropriations process to legislate policy and I will not do so today. Substantively, this provision is objectionable because while purporting to address public concerns about excessive media consolidation, it really only addresses the concerns of special interests. It is no coincidence, my friends, that the 39 percent is the exact ownership percentage of Viacom and CBS. Why did they pick 39 percent? So that these two major conglomerates would be grandfathered in, purportedly, in order to reduce the media ownership, which was voted 55-40 in the Senate. The fact is now they are endorsing Viacom and CBS's 39 percent ownership, grandfathering them in because they should have been at 35 percent. Remarkable.

I am not sure where the line should be drawn. We have spent hours and hours and hours in the Commerce Committee in hearings on this issue. I have never seen such an uprising of American public opinion on an issue that surprised me as much as this issue of media concentration. Hundreds of thousands of people contacted the FCC on this issue. A vote was forced in the Senate which rolled back—the first time in my memory—a decision of the Federal Communications Commission. I had very mixed emotions about it. But when I saw a clear channel radio go from 140 stations to 1,240 stations

and there is a toxic spill in Minot, ND, and there is not a single person in any of those stations to warn the local people, I am worried about media concentration.

So what did the appropriators do? They pandered to a special interest, Viacom and CBS, and grandfathered them in. That is what this is all about. Do you think they addressed the major concern that most have, which is cross ownership? When Gannett owns the Arizona Republic and Channel 12, it is OK. What happens when Gannett owns Channel 12 and Channel 10 and Channel 5? That is what concerns people.

So the appropriators, in a blatant bow to Viacom and CBS, insert a 39 percent rule. I again give credit where it is due, the power of the National Association of Broadcasters, which is not included in the provision, as the ultimate proof of their influence. Why is it that other concerns that have been raised and were voted on in the Senate were not included in the appropriations bill? It is because the National Association of Broadcasters did not want it in.

As I mentioned, this is not the first attempt by Congress to undo the FCC's new media ownership rules. Last September, the Senate voted 55-40 in support of Senator DORGAN's congressional disapproval resolution which sought to declare all of the FCC's new media ownership rules "null and void." The omnibus spending bill is not the appropriate legislative vehicle to undo the commission's broadcast ownership cap.

If the Congress wishes to take action on the issue of media ownership, it ought to do so in the committee of jurisdiction. The issue of media ownership is far broader than the limited scope of this provision. As William Safire wrote in an op-ed piece in the New York Times, itself a large owner of several media outlets: The effect of the media's march to amalgamation on America's freedom of voice [is a] far-reaching political decision [that] should be made by Congress and the White House, after extensive hearings and fair coverage by too-shy broadcasters, no-local-news cable networks, and conflicted newspapers.

I can spend a lot of time later on this year on this whole issue of what is happening with localism, with the station owner in Baltimore where the person goes on the set with an overcoat on and says, It is really cold here in Minnesota today. These are serious issues.

What did the appropriators do? They decided to do something for the National Association of Broadcasters. We had multiple hearings in examining media ownership and several committee members introduced S. 1046, the Preservation of Localism Program Diversity and Competition in Television Broadcast Service Act of 2002, and that is what we should be debating.

As the Senator from North Dakota, Mr. DORGAN, has said many times, we now have many voices and one ventriloquist.

Now, if we could have a little straight talk here today, while the

NAB is unhappy with only part of the FCC's new rules, there is no valid public policy reason why both of the FCC rules should not be considered together. In fact, if only one rule could be addressed, as I said before, the broadcast/newspaper cross-ownership rule is the one that should be addressed.

In an October hearing before the Senate Commerce Committee, the entire panel of academics and analysts agreed that the FCC's new newspaper/broadcast cross-ownership rule would have a significantly greater impact on media ownership concentration than the new 45-percent national television broadcast ownership cap.

One of the panelists, Dr. Mark Cooper, provided the example of Tallahassee, FL, where the top TV station has a 70-percent market share and the daily newspaper has 60 percent penetration. If they merge, they would employ almost two-thirds of all local journalists in that community.

A September article in Business Week recognized this and stated:

The 45% cap has become a rallying symbol, but the regulations that would truly reorder America's media landscape and affect local communities have flown under the radar. These would allow companies to snap up not only two or three local TV stations in a market but also a newspaper and up to eight radio stations. If the courts and Congress are worried about the dangers of media consolidation, they'll have to resist calling it a day after dispensing with the network cap and go after the rules with real bite.

In opposition to the National Association of Broadcasters selective advocacy, all four television networks have quit their membership in NAB. In a resignation letter submitted last year, ABC/Disney wrote:

Almost two years ago, the other major broadcast networks resigned from the NAB. The issue was the patently hypocritical NAB position favoring deregulation of newspaper cross-ownership and duopoly while simultaneously advocating continued regulation of the national station cap. The NAB and the public policy process in Washington should not be abused to advance the business interests of one broadcaster over another.

The ABC/Disney suggestion is exactly what is going on here. This provision is not about public policy; it is about advancing the interests of the National Association of Broadcasters.

To summarize, stand-alone legislation like S. 1046, that was reported out of the authorizing committee, is the correct vehicle to address these difficult and complex issues involving media ownership. Attaching a rider to selectively address concerns of special nonpublic interests is not the way to make good policy.

Let me state from the outset I take a back street to no one in my support of second amendment rights. I have supported nearly every law that protects the rights of law-abiding gun owners since first coming to Washington. But there is a special interest rider included in this Omnibus appropriations bill that is absolutely appalling. The House sponsor of this provision has argued that it benefits gun

owners, but the only gun owners it seems to help are those who have broken the law.

This rider has three major provisions, all of them unnecessary for gun owners, and none of them helpful for law enforcement.

First, it requires that background check approval records be destroyed within 24 hours instead of the current policy of 90 days. Proponents argue that keeping these records for 90 days constitutes a national firearms registry. I want to be very clear, I oppose Federal registration of firearms.

I also want to be equally clear that our current policy of keeping these records for 90 days does not constitute in any way, shape, or form a national registry. It is a phony issue.

The 90-days retention allows the NICS system to correct mistakes that occur when they accidentally approve someone who should have been denied a gun in the first place. This happens about 500 times a year, according to the General Accounting Office. Nearly all these false approvals are because of missing domestic violence records. So as far as I can tell, this provision benefits no one except those who should have been denied a firearm but were not.

The second provision prevents ATF from conducting an inventory audit of licensed gun stores. This means that ATF auditors will have no way of knowing if a gun store is missing firearms, a sure sign that they are selling guns illegally without the proper background checks.

In Tacoma, WA, ATF auditors recovered 233 firearms missing from Bull's Eye Shooters Supply store. One of those weapons was used by the accused DC area snipers. Why are we putting special language in a must-pass Federal spending bill to protect a store such as Bull's Eye? Consider the potential consequences.

A third provision prohibits the public release of crime gun trace information. This information is not top secret data that jeopardizes our national security or hinders law enforcement. We cannot have a government that operates in secret and refuses to release information that shows where criminals have obtained a gun.

This provision has no support from the law enforcement community, and was even opposed by Chairman YOUNG and Subcommittee Chairman WOLF. Yet here it is today included in this terrible bill. This language is an embarrassment to law-abiding gun owners and a slap in the face to law enforcement.

Now, it is going to get a little esoteric here for a second, but it is very important. Because what we have done in this bill has basically changed the entire fishing industry and the way they do business, again, to protect certain entities in the State of Alaska.

One of the policy riders is language that authorizes the Bering Sea and Aleutian Islands crab fisheries ration-

alization plan, which would divide 90 percent of that crab market among just a small group of processors. Under the provision, fishermen could only sell this crab to those few processors and, in turn, only those processors would sell to consumers.

We are creating a cartel, a Government-mandated cartel. And who is going to pay for that, at the end, in the form of higher prices? Those who eat this crab all over America, including my State.

This legislative language has not been considered by the authorizing committee nor requested by the administration. This provision raises serious antitrust concerns. Again, it would require—not simply allow but require—the crab fishermen to sell 90 percent of their crab harvest to predetermined processing companies. This precedent-setting action would vitiate antitrust laws, limit competition in the seafood sector, and ultimately hurt fishermen and consumers. Fishermen around the Nation have expressed strong opposition to this provision, as have at least a dozen newspaper editorial boards.

Before I go any further, I wish to clarify the difference between “fishing quotas” and “processing quotas.” Fishing quotas are allocation tools that allow fishermen to catch a certain portion of the overall allowable harvest. Fishermen can determine when and under what conditions to fish with such quotas, and fishing quotas have been widely recognized to benefit fishermen, the environment, and consumers.

In contrast, processing quotas would allocate buying rights for the crab catch among a handful of processing companies so that each would be guaranteed to receive a certain percent of the overall harvest. Regardless of how efficient these processors are or what kind of price they are offering, they would have a guaranteed market share. I thought that kind of thing went away with the Berlin Wall. Under this plan, it would be illegal for fishermen to take their crab to other processors.

This language would have far-reaching consequences. Yet it was included in this must-pass bill without ever having been considered or debated by the committee of jurisdiction, the Commerce Committee.

Fishermen throughout the Nation object to the crab plan's individual processing quotas, IPQs, because the precedent-setting nature of this action could lead to IPQs in the processing sector of other fisheries. Indeed, crab boat owners and crew from all over the country—even from Arizona—have voiced their opposition to this proposal.

“Crab cartels,” the Anchorage Daily News—even the Anchorage Daily News. “Stevens pushes plan that gives processors too much market power.”

The Los Angeles Times: “Toss This Stinker in the Sea.”

The Seattle Post-Intelligencer:

The quota plan would guarantee shares not just to boat owners, as has been done successfully with other species, but also to fish

processors on the land. That has nothing to do with safety. As the U.S. Department of Justice recognizes, it raises significant antitrust concerns.

Crab Cartels are Bad News for Maine Lobster Industry.

Seattle Times:

Crab Industry Bakes a Monopoly Pie.

Seattle Times:

Feeling Crabby? No Need for a Monopoly.

It goes on and on. There is nobody who thinks this is a good idea.

In addition to affecting the price setting process, I am aware of at least one crab fisherman who owns a fishing boat and a “catcher-processor” boat. He objects to this policy rider because it would make it illegal for him to sell his own catch to himself, so that the catch from his fishing boat could be processed on his processing boat.

According to the National Research Council, the General Accounting Office, and the Department of Justice Antitrust Division, fishermen's concerns about IPQs are clearly justified. The 1999 NRC publication, *Sharing the Fish*, found no “compelling reason to establish a separate, complementary processor quota system” to accompany an Individual Fishing Quota program. These findings were echoed by the GAO in its December 2002 report on IPQs, which failed to find the IFQ programs resulted in harmful impacts on processors in the halibut and sablefish fisheries that would warrant creation of an IPQ program.

Furthermore, on August 27, 2003, the Assistant Attorney General of the U.S. Department of Justice Antitrust Division wrote a letter to the General Counsel of the National Oceanic and Atmospheric Administration, NOAA, in which he opposed the IPQ provisions of the crab plan, stating “processor quotas are not justified by any such beneficial competitive purpose” and that “The Department urges NOAA to oppose IPQ.”

While the fisherman are up in arms, the processors are already counting their chickens, or in this case, crab harvests, and in turn, their profits. That is because the percent of the harvest that they will be able to process in the future is based on how much they have processed in the past under the free market environment. Regardless of future operational efficiency, supply and demand, or any other real-world factors, these processors will be guaranteed their allocation in perpetuity. Consider, for example, one company that recently has processed roughly 20 percent of the Bering Sea and Aleutian Island crab. This provision will assure that company continues to receive 20 percent of future harvests—worth on the order of tens of millions of dollars annually.

For centuries, fishermen have used market forces to negotiate their dockside prices, and this has had the effect of maintaining competition and benefiting consumers. Processor quotas throw an enormous wrench into the free market machinery.

In addition to affecting the price-setting process, the crab IPQ plan also would effectively prevent new processors from entering the industry. If anyone wants to enter the processing sector, they would need to buy the processing rights from the few processors who would have processing quota.

Considering all these facts, the administration has officially stated its opposition to IPQs, as reported in the *Sacramento Bee*, *Kodiak Daily Mirror*, *Anchorage Daily News*, and *Seattle Times*. The administration's proposed language for amending the Magnuson-Stevens Fisheries Conservation and Management Act clearly specifies that processors could own fishing quota, but does not propose a separate quota system divvying up processor quotas.

Editorial boards from at least 12 major newspapers—the *Washington Post*, *Washington Times*, *Boston Globe*, *Oregonian*, *Anchorage Daily News*, *Los Angeles Times*, *Honolulu Advertiser*, *Daily Astorian*, *Seattle Times*, *Seattle Post-Intelligencer*, *Portland Press Herald* in Maine, and the *Tampa Tribune*—have come out against IPQs. Note that these newspapers include the entire west coast—even Alaska and Hawaii.

I ask unanimous consent they be printed in the RECORD.

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

[From the *Los Angeles Times*, Oct. 5, 2003]

#### TOSS THIS STINKER IN THE SEA

Ted Stevens thinks the Alaskan fishermen and processors he represents shouldn't have to comply with federal rules they don't like. So the powerful Republican, chairman of the Senate Appropriations Committee, attached a rider to the Commerce, Justice and State appropriations bill to give Alaskan industry a pass.

Stevens insists that Alaskans have done a better job husbanding their fish-teeming waters than have other states. Regardless of whether he is right about the health of the Alaskan crab, salmon and pollock populations, he's wrong to use the appropriations process to grant favors that rewrite federal resource law behind closed doors.

One provision of his rider would freeze all funds to enforce federal laws imposing new limits on crabbing and fishing in sensitive ocean habitat. Another legal barnacle guarantees certain processing companies 90% of the lucrative Bering Sea and Aleutian Islands crab catch. This unprecedented deal not only would favor some processors and unfairly exclude others, it would hobble fishermen from offering their prized catches to the highest bidders.

This rider is troubling by itself. But it becomes deeply disturbing when combined with the growing market for seafood and the more efficient fishing techniques that threaten ocean species. For example, the red king crab season in Alaska's Bristol Bay this year was the shortest ever. Crabbers captured an entire year's quota in a little more than two days by using 700-pound steel pots baited with chopped herring and set and retrieved by hydraulic launchers and large winches. Yet even as this high-tech harvest intensifies each year, Stevens would order federal regulators to lay off, a move certain to put more pressure on the prized critters' survival.

Stevens' rider also would set destructive precedent. California, Florida or Maine law-

makers could decide they want to suspend federal rules protecting their fish.

Federal fisheries law is and should remain the product of consensus and deliberation, not one senator's backroom maneuvers. That's why Sens. John McCain (R-Ariz.) and Olympia J. Snowe (R-Maine) promise to "strenuously oppose" Stevens' rider. When the mammoth spending bill that it is hooked to comes before the Senate, other senators too should cast his smelly deal into the deep.

[From the *Anchorage Daily News*, Sept. 16, 2003]

#### CRAB CARTELS—STEVENS PUSHES PLAN THAT GIVES PROCESSORS TOO MUCH MARKET POWER

U.S. Sen. Ted Stevens is fast-tracking a controversial plan that dictates where Alaska's Bering Sea crab fishermen are allowed to sell all but a tiny part of their catch. He is pressing the legislative process to ram through a scheme that short-circuits market competition.

The concept Sen. Stevens is pushing is known as processor quotas. Using a legislative shortcut called a rider, he tacked his measure onto one of the 13 federal spending bills that have to pass each year, instead of pursuing a stand-alone bill that would have to be judged on its own merits in committee and on the Senate floor. A rider is no way for Congress to make such a complicated, far-reaching and hotly disputed decision.

Processor quotas are part of a larger set of fish management changes that address real problems in the Bering Sea. Fishing for crabs today is a free-for-all, a race to see who can catch the most the fastest. As a result, too many boats are chasing too few crabs. They go out in dangerous weather, and crews work dangerously long hours. The boats then rush to deliver their catch, so processing plants have to move huge amounts of product before it spoils.

To cure these problems in some other Alaska fisheries, federal managers now use individual fishing quotas. In that system, the government gives each fisherman the right to take a certain percentage of each year's allowable harvest. Fishermen can go out when it's safe and work at a safe pace without having to worry that others will grab all the fish. Fish plants have more time to process the catch and produce higher-quality products.

These fishing quotas have improved the safety and economic health of other Alaska fisheries. Processors, though have complained that fishermen with quotas now have too much time to shop around and get higher prices for their catch.

Crab processors persuaded the North Pacific Fishery Management Council to try to cure their problem. So when the council decided to give fishermen rights to catch Bering Sea crab, fish plants in the region also got guaranteed rights to process the catch. Fishermen would have to sell 90 percent of their catch to existing processors. This part of the council's plan requires congressional approval, which is where Sen. Stevens and his rider come in.

Processor quotas are a straightforward way for fish plants to limit competition and grab back economic power they might lose if fishermen get a guaranteed share of the catch. Imagine if Congress dared to tell farmers they could sell their grain only to a handful of agribusiness companies. There would be an uproar on the plains. The U.S. Department of Justice opposes fish processor quotas because they are anti-competitive, and indeed they are.

Processor quotas are a government attempt to do the economically impossible. They are a convoluted system that tries to hold everybody harmless as the government

revamps management of the crab fisheries. It's inevitable that those changes will create winners and losers, both among fishermen and processors. The government can't micro-manage such complex economic consequences and shouldn't even try. The job is just too complicated, the mechanisms too convoluted, the intervention in markets too deep.

Sen. Stevens says he's just doing what the professional managers at the federal fish council want. (They unanimously approved a crab management plan with processor quotas.) The only problem is that the fish council is an industry-dominated process. This complicated, anti-competitive deal was hatched up in an attempt to keep all the players at the table happy. Consumers and free-market advocates don't have a seat on the council.

[From the *Seattle Post-Intelligencer*, Nov. 3, 2003]

#### BOAT QUOTAS MAKE CRAB FISHING SAFER

Crab fishing off Alaska can be made safer. The key to reducing fatalities is a quota system. Allotting shares of the Alaska crab catch to boat operators could end the frenzied, dangerous free-for-all operations, dramatically documented by recent P-I stories and photos.

Unfortunately, Sen. Ted Stevens of Alaska is trying to ram through a broad new kind of quota system with too little consideration. At the same time, Stevens would halt several efforts to protect Alaskan fish. He would do it by attaching a rider to a vital spending bill. As fellow Republican Sens. John McCain and Olympia Snowe recognize, that's a poor way to make policy.

Attaching riders to spending bills end-runs the lawmaking process. Stevens' proposals need full scrutiny. His rider would reopen a troubled pollock fishery, stop studies of critical North Pacific habitat and prevent new rules against bottom-scraping trawling equipment.

The quota plan would guarantee shares not just to boat owners, as has been done successfully with other species, but also to fish processors on the land. That has nothing to do with safety. As the U.S. Department of Justice recognizes, it raises significant anti-trust concerns.

Unless Stevens rewrites his rider, the Senate should block it. In the name of saving lives, too much mischief could be played.

[From the *Portland Press Herald*, Nov. 3, 2003]

#### "CRAB CARTELS" ARE BAD NEWS FOR MAINE LOBSTER INDUSTRY

A rider on the commerce appropriations bill has made some Alaska fishermen and environmental groups, well, crabby. Rightly so.

Sen. Ted Stevens, R-Alaska, is trying to push through a plan that would essentially create "crab cartels" in Alaska, guaranteeing certain crab processors a quota of the catch. That undermines fair market competition. As the *Anchorage Daily News* rightly points out, nobody would try to tell farmers that they could only sell their grain to certain agribusinesses.

Crab producers want the plan, obviously, because it guarantees them business but they also say it will get crab to consumers faster.

Such a rider would set a dangerous precedent, shifting oversight of the details of the regulatory process from the regional council and giving it to Congress. The regional council system is flawed, but it does allow for more public input. There's also a danger of this plan eventually affecting other business, such as Maine's lobster industry. Sen. Olympia Snowe is opposed to the rider.



The plan also would end funding for identification and protection of essential fish habitat, making sensitive areas such as coral reefs vulnerable to damage by huge trawlers.

This rider is bad for Alaska and it's bad for the nation as a whole, and it should be removed from the bill.

[From the Seattle Times, Nov. 1, 2003]

#### FEELING CRABBY? NO NEED FOR A MONOPOLY

Seafood processors, led by Seattle-based Trident Seafoods, have been campaigning for years for exclusive rights to buy crab from the Bering Sea fleet. If these rights come into effect, a newcomer who wanted to buy that crab would have to buy the rights to buy crab from companies already in the business.

In the proposal now under consideration, anyone wishing to enter the crab-processing business would have to get permission from someone already in it.

And that is a monopoly privilege.

Processors say they are asking only for what boat owners will get: an individual quota of crab. But these two quotas are not the same.

For the fishermen, crab is wild and in the public domain. There has to be a quota, either for the whole fleet or each boat. The idea of a quota for each boat allows crab to be harvested slowly, cost-effectively and safely. There is a public interest in doing it that way.

Processors buy crab that is already harvested. There is no public-interest reason to give certain processors what amounts to ration coupons. And nowhere else in U.S. fisheries do such rights exist.

Individual harvest quotas exist in halibut, black cod and elsewhere. But they are never buying quotas.

Sen. Ted Stevens, R-Alaska, and head of the Appropriations Committee, is now offering processors quotas to buy. Stevens' effort is a rider to an appropriations bill that is necessary to fund the federal departments of State, Commerce and Justice.

Stevens' rider would also cancel a study by the National Marine Fisheries Service of coral and sponge in the waters off Alaska. The study aims to find out how important these are to marine life, including fish and crab, how coral beds are affected by bottom trawling, and what measures might be taken to protect valuable habitat. \* \* \*

[From the Washington Times, Dec. 13, 2003]

#### A BITTER PILL FOR CRABBERS

(By Donald R. Leal)

Depletion of the fish in our coastal oceans is a growing environmental concern, and the state of Alaska is poised to help correct the problem. But Alaska's senior senator, Ted Stevens, Republican, won't let it happen without attaching some expensive strings. Mr. Stevens is backing individual fishing quotas (IFQs) for Alaskan crabbers. That's good policy. But he insists on a provision requiring crabbers to sell 90 percent of their catch to a small group of established processors. That's bad policy. To accomplish this, he has attached a rider to an omnibus appropriations bill, which the House and Senate must vote on by Jan. 31.

Alaskan crab fishers participate in one of the most dangerous fisheries in the world. Loss of life is not uncommon. Part of the reason crabbing is so dangerous is that the seasons are incredibly short—only four to six days long in the winter—when winds are high, water is turbulent, and decks are icy.

Regulation has not ended the race that occurs when fishers depend for their livelihood on unowned resources like ocean fish and shellfish. IFQs could solve this problem.

IFQs would give crab fishers a right to a specific portion of the total allowable catch set for Alaska crabs each year.

With IFQs, each crabber would know how much he or she is allowed to catch each season. Assured of such a quota, fishers would not be forced into the destructive "race to fish." Fishing management councils could extend the seasons, fishing would be safer, the quality of the seafood would go up (fishers would have time to protect the quality), and fresh crab would reach the consumer more often.

But there's the rub—fresh crab. Mr. Stevens wants to protect the companies that process fish. Under the current regulatory regime, with its short, intense seasons, these processors invested in additional plant capacity such as extra freezer space. If IFQs are implemented and seasons extended, some of this processing and storage capacity will probably not be needed. Also, processors will also have less control over prices, because fishers will be able to choose when they want to fish.

Mr. Stevens is trying to create a package for crab fisheries that holds IFQs hostage to benefits for processors. His rider, which would give crabbers IFQs only if they deliver 90 percent of their catch to a handful of processors, has drawn protests from the Bush administration and Senate colleagues. Even the Justice Department has suggested it would not stand up under antitrust law. Fellow Republican Sens. John McCain of Arizona (and Olympia Snowe of Maine have also criticized Mr. Stevens for attaching a precedent-setting policy issue to an appropriations bill.

Processors deserve sympathy because they were steered by flawed government policy to invest in redundant capacity. But forcing crabbers to take their catch to a specific processor will hurt their chances of receiving a competitive price. It could also derail the effort, supported by free marketers and environmental activists alike, to implement IFQs elsewhere. Surely better options—like a stranded capital buyout program or simply including processors in the allocation of the individual fishing quotas—exist for compensating processors.

Alaska's halibut fishery has already shown the benefits of IFQs. In the early 1990s, halibut fishermen were limited to fishing during just three 24-hour fishing openings a year. Catching halibut was dangerous, profits were low, and most of the catch had to be frozen. When IFQs were adopted in 1995, the season was expanded to 245 days. Fishing became more profitable and safer. Fisheries in New Zealand, Iceland, Australia and Canada also show that IFQs improve fish management, reduce danger and improve product quality. Congress should not let the processors' difficulties stand in the way of a solution to a problem that is hurting marine resources around the world. Don't let Sen. Stevens' rider remain.

Mr. MCCAIN. Additionally, the conference report would authorize a similar processor quota program for Gulf of Alaska rockfish. Even though IPQ proponents had previously indicated that IPQs are needed for crab only, they are now proposing authorizing such a program for a different Alaskan fishery.

Further, the conference report also would authorize the North Pacific Council to open an area currently closed to fishing, but open it only to the Aleut Corporation, which would also have the exclusive right to process the fish. This new fishery could be worth more than \$10 million, yet the proposal has not undergone the proper

congressional authorization and oversight process that we demand for other important policy issues.

Obviously this proposal makes fundamental changes to our fisheries policies. This rockfish and pollock language was not requested by the administration nor the North Pacific Fishery Management Council, and it hasn't been reviewed by the authorizing committees. At a minimum, all of these new quota provisions merit thorough review and debate prior to their enactment.

The tacking of fisheries riders onto appropriations bills extends all the way to North Atlantic fisheries as well. Last-minute language was added that would prevent the administration from implementing a groundfish management plan required by the Magnuson-Stevens Act. Not surprisingly, the administration did not request this change, nor has the authorizing committee of jurisdiction held any hearings on this proposal.

In the northeast, fishery managers must comply with a court-ordered implementation date of May 1, 2004, for putting a groundfish management plan into effect, and the administration is now seeking public comment on and finalizing regulations to do this.

Even before we know what the final plan is, the language would prohibit the administration from spending any money to implement this plan. The legislative rider would authorize funding for only a certain set of management rules—which have already been determined by a court to be out of compliance with the Magnuson-Stevens Act.

So, under the language in the omnibus, it would be illegal for the administration to comply with Federal fisheries law as set out in the Magnuson-Stevens Act. If this provision is enacted, there is a real risk that the fishery could be ordered closed by a Federal court.

Again, this significant policy change was not considered by or debated in the Commerce Committee. I am more than willing to discuss ways to redesign the fisheries management council process, along with the rest of the Magnuson-Stevens Act, if indeed, it is as flawed as some seem to think it is. This rider, however, is not the appropriate way to make policy.

Section 626 of the omnibus broadly requires the Secretary of Commerce to "negotiate or reevaluate, with the consent of the President, international agreements affecting international ocean policy."

Under 22 U.S.C. Section 2655a, however, international ocean policy issues are currently handled by the State Department's Bureau of Oceans and International Environmental and Scientific Affairs, or OES. Several marine resource conservation laws, including the Marine Mammal Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act, grant the Secretary of State the authority to



negotiate international agreements on these matters. Clearly, this language conflicts with the Secretary of State's statutory responsibility for carrying out a coherent foreign policy.

When appropriators first proposed such a transfer of responsibility in the FY04 CJS appropriations bill, Secretary Colin Powell explained, "Such a provision would significantly hamper the Department's ability to address important foreign policy issues (e.g., oceans policy, marine pollution, global overfishing) to which the United States can ill afford to give short shrift."

Considering the important role that the United States needs to maintain as a leader in the international community on ocean policy matters, I am dismayed that the appropriators would attempt to transfer these powers between government agencies without any public or expert review and debate. This is clearly a matter that needs the full attention of the Commerce and Foreign Relations Committees, and this has not happened.

A provision in the EPA portion of the VA-HUD section of this bill prohibits all States, with the exception of California, from exercising their existing authority under the Clean Air Act to regulate "non-road" engines to improve air quality. This language will effectively tie the hands of the State air pollution control agencies by preventing them from addressing the 120 million small engines which are a substantial and growing source of smog and soot pollution nationwide.

This provision was originally put in the VA-HUD bill at the request of a single engine manufacturer, Briggs and Stratton. The company suggested that the provision would save jobs. I find this argument very disingenuous due to the fact that, in its September 2003 filing with the SEC, the company stated, "Briggs and Stratton does not believe that the CARB staff proposal will have a material effect on its financial condition or results of operations . . ."

Our colleague from California, Senator FEINSTEIN, made an effective argument against the language on the Senate floor during consideration of the bill, but she was not permitted to offer an amendment to strike the language. Mr. President, what has come out of the conference may be acceptable to California and to Briggs and Stratton, but it is unacceptable to me and should be unacceptable to almost every Member of this body.

If you have not heard from your State air agency yet, you certainly will soon. In the State of Arizona, for example, the potential emissions impact of these unregulated engines is equivalent to 1.4 million additional cars on the roads. This is almost certain to worsen the smog problem in the city of Phoenix, and I am sure it will be the same in many other cities in the Nation. I have no doubts that with worsening smog will come many more cases of asthma and a litany of other health problems. It is simply outrageous that

States will be prohibited from exercising their responsibility to protect public health and the environment because one company was able to secure a special deal in a must-pass spending bill.

I also am very concerned that for the NASA funding portions, that the Joint Explanatory Statement to the conference report contains a list of 144 earmarks that total in excess of \$300 million. These earmarks are unauthorized and unrequested by the President. Meanwhile, the international space station has been funded at \$200 million below the President's request. This action comes despite news reports that have outlined numerous safety problems aboard the international space station.

The Columbia Accident Investigation Board (CAIB), which was assigned to determine the causes of last February's tragic accident, described the results of congressional earmarking in its August report. According to the CAIB Report:

Pressure on NASA's budget has come not only from the White House, but also from the Congress. In recent years there has been an increasing tendency for the Congress to add "earmarks"—congressional additions to the NASA budget request that reflect targeted Members' interests. These earmarks come out of already-appropriated funds, reducing the amounts available for the original tasks.

I must question whether we have learned anything from the shuttle accident and the CAIB findings. During a Senate Commerce Committee hearing last year, I questioned Admiral Gehman about the effects of the \$167 million that was earmarked in fiscal year 2003 appropriations bill. He responded by saying that "\$100 million will buy a lot of safety engineers." Maybe we should ask what he thinks should be done with over \$300 million worth of earmarks.

Mr. President, I would like to take a few minutes to discuss the importance of fully funding the international space station. Again, the omnibus provides \$200 million less than the President's request at a time when serious safety concerns have been raised about the space station. This underfunding could be corrected if we simply eliminated these wasteful earmarks and we'd even have money to spare.

William F. Readdy, the NASA Associate Administrator at the Office of Space Flight, testified before the Commerce Committee that the space station onboard environmental monitoring system which, "provides very high accuracy information on atmospheric composition and presence of trace elements . . . is not operating at full capacity." He also testified that the crew health countermeasures, which include an onboard treadmill and associated resistive exercise devices, were "operating at various degrees of reduced capacity and needed to be repaired, upgraded or replaced."

Articles in the Washington Post paint an even more disturbing picture. An October 23, 2003, article describes:

The problems with monitoring environmental conditions aboard the space station have festered for more than a year, some NASA medical officials said. Space station astronauts have shown such symptoms as headaches, dizziness and "an inability to think clearly," according to a medical officer who asked not to be named. The onboard sensors designed to provide real-time analysis of the air, water and radiation levels have been broken for months, which has made it impossible to determine at any given time whether there is a buildup of trace amounts of dangerous chemical compounds that could sicken astronauts, or worse.

A November 9, 2003, Washington Post article reports that:

A recent NASA study found that the risk of fire aboard the station has grown because the crew is stowing large quantities of supplies, equipment and waste in front of or near 14 portals that would be crucial for detecting and extinguishing a fire in any of the station's various compartments. There is also concern that a portion of the station's water stores supplied by the Russians may have high levels of carbon tetrachloride, a toxic contaminant.

As far back as March, internal studies warned of a host of dangers for six separate systems, including the thermal controls that cool the station's computers and interiors, that would likely grow out of trying to run the station with limited supplies and a caretaker crew of two instead of the normal complement of three.

Before the recent launch of Expedition 8, the Chief of NASA's Habitability and Environmental Factors Office and NASA's Chief of Space Medicine signed a dissent to the "flight readiness certificate." The dissent declared that "the continued degradation in the environmental monitoring system, exercise countermeasures system, and the health maintenance system, coupled with a planned increment duration of greater than 6 months and extremely limited resupply, all combine to increase the risk to the crew to the point where initiation of [the mission] is not recommended."

In addition, a December 6, 2003, Washington Post, article states that one of the gyroscopes that control the space station's motion failed, and that another was showing vibrations and spikes in electrical current. NASA will be forced to use Russian thrusters onboard the space station to shift the station's position.

These are very serious issues that cannot be ignored, yet here we are, about to approve more than \$300 million for unrequested earmarks while underfunding more pressing needs. How will these cuts to the President's budget request affect the safety of the space station? Are we really willing to take any risks? Mr. President, that this practice continues in the face of legitimate safety concerns is simply unacceptable given the tragedies experienced just last year.

The Statement of Administration Policy opposed this \$200 million reduction in the Senate-passed VA-HUD bill, stating that: "After diligently rebuilding reserves to place the Station on sound financial ground, this reduction

would deplete reserves deemed critical by independent cost estimates and limit the program's ability to address risks in FY 2004, including impacts from the *Columbia* accident."

You know, I have to admit I am naive. I thought after the *Columbia* disaster we would see a reduction in the earmarks. It was an increase.

In addition, I have been informed that this reduction would place at risk actions that NASA is taking to address the Independent Management and Cost Evaluation (IMCE) Task Force recommendations to ensure a "credible" ISS Program.

I know there is a lot of excitement about last week's announcement by the President proposing a new agenda for human exploration of the Moon, and eventually Mars. However, let us also note that he reaffirmed the United States commitment to completing the ISS. The Commerce Committee will hold a series of hearings to discuss the proposal, but we will not lose sight of our responsibilities of ensuring the safety of the space shuttle and international space station.

Finally, it is unfortunate that the appropriators, while earmarking hundreds of millions of dollars in NASA, underfunded the Advanced Polarimeter Sensor of the Global Climate Change Research Initiative by \$11 million below the President's request—a 47-percent decrease—yet could sure find funds for thousands of earmarks. This reduction would significantly impact the development of the sensor, which is designed to measure methane, tropospheric ozone, aerosols, and black carbon in the atmosphere. The proposed reduction would delay the purchase of "long-lead" item purchases, which could potentially delay the launch date of the satellite from 2007 to 2008.

As my colleagues know, the public is greatly concerned about the impacts of climate change on our environment and economy. Although the administration and I have a difference of opinion on the need to take action to reduce greenhouse gas emissions, we are in agreement on the need for research in this area. We should not cut this publicly significant research, so that we can simply fund local pork projects.

The bill would appropriate funding for the Advanced Technology Program, ATP, at approximately \$152.2 million above the President's request. The language would ignore the President's attempt to rein in a corporate welfare program in a time of skyrocketing Federal deficits and critical national security needs. For example, the most recent ATP awards included a grant to Aqua Bounty Farms, Inc., to "produce sterile transgenic fish that can be made fertile as needed for reproduction." I can assure you that the ATP program was never envisioned to fund the production of sterile transgenic fish.

I also am concerned about funding for the Scientific and Technical Research and Services account of the Na-

tional Institute of Standards and Technology. This account supports NIST's scientific research, including Nobel Prize winning research on the Bose-Einstein condensates. This account is funded at approximately \$43 million beneath the President's request, while the appropriators have continued to earmark activities within this account. I would ask my colleagues to ask themselves if it is more important to fund a spreadsheet engineering initiative at Dartmouth University, or research to help our beleaguered manufacturing sector. Should we fund a wind demonstration project in Texas or research to improve the equipment for our Nation's first responders? In the long run, it will be considered a great tragedy that we have wasted our Nation's scientific potential of meaningless parochial projects.

This reduction is even more disturbing given the reality that NIST will have to lay off many of its scientists and engineers due to lack of funding. Let me remind my colleagues that these are the scientists and engineers that have won two Nobel Prizes for research in the past few years. These layoffs will occur even as we continue to send funding to industry through the ATP program for research that is inconsistent with the program requirements of being "high risk." That does not send the right message to our award winning scientist and engineers of how we value their work.

There is also language that redirects \$40 million to the Port of Philadelphia for construction of a cargo terminal that is designed to support "high-speed military sealift and other military purposes." Today, these type of vessels do not even exist, nor are they being championed by the military. They are supported, however, by the private investors and their lobbyists who obviously think it makes sense to place the risk of their venture on the backs of the taxpayers. Let me also mention that the design of these vessels is based on unproven technology. And, in reviews of the proposed vessel technology by the Department of Transportation, it was determined that the project did not qualify for government backed financing. It is ridiculous that despite these facts, this legislative rider will risk wasting \$40 million of the taxpayers on a terminal to support a certain type of vessel that may never exist. This is a costly example of putting the cart before the horse.

By the way, we have ample precedent. The Senator from Hawaii, the Senator from Alaska, and the Senator from Mississippi put in loan guarantees for cruise ships to be built in Pascagoula, MS, which cost the taxpayers \$273 million in loan guarantees, which I fought against and predicted would fail. Only \$273 million. By the way, for those of you who keep up with it, the hulls of these cruise ships in Mississippi have been towed to Europe.

Mr. President, it's time to get serious about what we are doing here. We have

a deficit of \$500 billion—that's half of a trillion dollars—the largest ever. Our fiscal future can only be described as bleak. Government watchdog organizations and think tanks, both liberal and conservative, have expressed enormous concern about the level of spending in this bill.

A recent report by the Heritage Foundation states:

Following increases of 13 percent and 12 percent during the previous two years, 2004 would mark the third consecutive year of massive discretionary spending growth.

It further notes that:

Altogether, total Federal spending in 2003 topped \$20,000 per household [I am glad we don't divide that up by States] for the first time since World War II and is set to grow another \$1,000 per household in 2004.

According to a joint statement issued by the Committee for Economic Development of the Concord Coalition Center on Budget and Policy Priorities:

Without a change in current fiscal policies, the Federal Government can expect to run a cumulative deficit of \$5 trillion over the next 10 years.

These numbers are shameful and frightening.

Another astonishing part of this report states:

After the baby boom generation starts to retire in 2008, the combination of demographic pressures and rising health care costs will result in the cost of Medicare and Medicaid and Social Security growing faster than the economy. We project that by the time today's newborn reaches 40 years of age, the cost of these three programs, as a percentage of the economy, will more than double from 8.5 percent of the GDP to over 17 percent.

I urge my colleagues to read this joint statement.

The Congressional Budget Office has issued warnings about the dangers that lie ahead if we continue to spend in this manner. In a report issued last month, CBO stated:

Because of rising health care costs in an aging population, spending on entitlement programs, especially Medicaid, Medicare, and Social Security, will claim a sharply increasing share of the Nation's economic output over the coming decades. Unless taxation reaches levels that are unprecedented in the United States, current spending policies will probably be financially unsustainable over the next 50 years. An ever-growing burden of Federal debt held by the public would have a corrosive effect on the economy.

That is from the Congressional Budget Office, not from any liberal or conservative think tank, as much as I value those.

Additionally, CBO projected a 10-year deficit of \$4.4 trillion.

The Wall Street Journal recently reported, according to an International Monetary Fund report:

If cumulative budget deficits rise by 15 percent of gross domestic product, as the Congressional Budget Office expects, world interest rates would be pushed up by one-half to 1 percentage point over 10 years.

We are paying a price overseas for our reckless spending. The U.S. dollar is tumbling, and it is a result of our fiscal indiscipline and our enormous deficit. Foreign countries are losing confidence in the dollar. To underscore the

point, today the dollar stands at a 7-year low, worth 80 cents against the Euro, a 40-percent drop in under 4 years.

In his State of the Union Address last night, the President called on us to act as good stewards of taxpayers' dollars. My response to the President: Mr. President of the United States, you also must be a steward of taxpayers' dollars. Veto this bill. Veto this bill, Mr. President of the United States, and demand this pork be removed—this \$11 billion in pork be removed—and send a message that it is not business as usual anymore in the Senate. We cannot do this to our children and our grandchildren. We cannot do this to them.

Sooner or later, we are going to have to make some choices around here. We are going to have to make some choices between our children's and our grandchildren's futures and having some kind of fiscal sanity and plan for the future. We cannot continue the practices of the Senate. We need to have a point of order that any unauthorized appropriation and any policy change is subject to a specific point of order, not one that brings down the whole bill, but one that brings down that provision.

I could bring a point of order against this bill, and it would lose by 99 to 1 because it brings the whole bill down. We should have the right to object, and object vociferously, to North Pole, AK, getting \$200,000. We should be able to object to the brown tree snake in Alaska in which we have invested I have no idea how many tens of millions of dollars. I think Alaska and Hawaii should pay for their own statehood celebrations. We in Arizona do.

If I sound like I am angry and upset, it is because the people I represent are angry and upset. The people I talked with in my State, who I have been privileged to represent for a long period of time, are deeply disturbed. They know what is going on. They know their kids are not going to ever receive Social Security benefits as present retirees are today. They know we just laid a multi-trillion-dollar debt on them in the form of a Medicare prescription drug bill, and they figured it out. By the way, the overwhelming majority, the last poll I saw, 58 to 42, don't like this prescription drug bill which no senior I know can understand, and I don't blame them because I don't understand it either.

If I sound as if I am not happy and perhaps given to flights of rhetoric, which I am from time to time, it is because my constituents are demanding that we change this system. The appropriators have become all power in this body. That is not appropriate. We need to change the rules, and we need to change the way we do business.

Last year, we stood here with an Omnibus appropriations bill. This year we stand here with an Omnibus appropriations bill. I was pleased we did not cut off debate until I heard: We are just doing this for labor, but it will pass.

We are just going to do this for labor once.

How stupid is labor? If I were a labor leader, I would say: Either vote it down or vote it up, but don't throw me some kind of 4-day delay.

I understand labor just took some significant setbacks. They are about to take another one.

Mr. President, I will continue to fight. I will continue to see if we can't stop funding the Rock and Roll Hall of Fame and get our thrills on Blueberry Hill, the wild turkey, and all of the other turkeys that have become part and parcel of this thousand-page piece of pork.

I thank my colleagues for their indulgence. We will be hearing about this issue for a long time to come because the American people demand we address it.

I yield the floor.

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

Mr. HARKIN. Mr. President, what is the order right now?

The PRESIDING OFFICER. The chairman and ranking member of the Appropriations Committee control the time until 6 o'clock.

Mr. HARKIN. Mr. President, in their absence, I ask unanimous consent that I be allowed to proceed for 15 minutes.

Mr. GRAHAM. Mr. President, I would like the Senator to amend the request he has just propounded so that I might have 15 minutes immediately after Senator HARKIN.

Mr. REID. Mr. President, the Senator from New Jersey, Mr. LAUTENBERG, has been waiting a long time. He is in the cloakroom. If we can have Democratic speakers in order, Senator HARKIN, Senator LAUTENBERG, then Senator GRAHAM, and Republicans to speak in between, that will certainly be appropriate. We have been going back and forth. Will that be OK?

The PRESIDING OFFICER. A unanimous consent request has been propounded. Is there objection to the request? Without objection, it is so ordered.

Mr. HARKIN. I thank the Chair.

Mr. President, picking up where I started earlier today, I listened to the President's State of the Union Message hoping he would come up with a real jobs plan to help America's families. But quite frankly, there was nothing in the State of the Union Address that talked about that.

We need to extend emergency unemployment for the hundreds of thousands of people who paid in when they were working, but months after losing their jobs, they still can't find work.

We need to raise the minimum wage, which has not been increased in 6 years.

And right now, most important of all, the administration needs to withdraw its proposal that would deny millions of American workers their overtime pay protections.

Five months ago, the Senate voted on my amendment 54 to 45 to block the

administration's effort to take away overtime pay protection for up to 8 million workers. That's right, the Bush proposal that came out of the Department of Labor would deny overtime pay protection to 8 million American workers.

The House followed soon after us and voted 223 to 201, and the Senate spoke again yesterday in its vote against cloture.

Now, again, this should not even be an issue in the Omnibus appropriations bill before us. Congress spoke up clear as a bell. They said: No, the administration should not strip overtime pay protection for these 8 million workers.

As we all know, the administration refused to accept the will of Congress. The administration ordered its foot soldiers in the House to strip the provision from this omnibus bill. Senator SPECTER and I fought to keep it in, but the administration refused any cooperation or any compromise. In the end, just like that, the administration nullified the clear will of both Houses of Congress and of the American people.

This is a clear abuse of power by the administration and it is part of a pattern we have seen from this President time and again. The administration seems to believe in government by one branch, the executive branch. Time and again, we see this administration running roughshod over the will of Congress. When there are no checks and balances, the result is bad public policy, and that is exactly what we see today.

The administration's new rule is a stealth attack on the 40-hour workweek, pushed by the White House without one single public hearing. As I have said time and again over the last several months, it will effectively end overtime pay for dozens of occupations, including police officers, firefighters, clerical workers, air traffic controllers, social workers, journalists, nurses.

In the amendment that I offered and that we voted on and that the House supported, there was one part of the President's proposal our amendment did not touch. The President's proposal does increase the income threshold that guarantees overtime pay protection from \$8,060 a year to \$22,100 a year. In other words, if someone makes under \$22,100 a year, under the President's proposal they are guaranteed overtime pay if they work more than 40 hours a week, regardless of their occupation. Well, my amendment did not touch that, but now we understand that the Labor Department is providing tips within the proposal to employers on how to get around it. It included helpful tips for employers, advice on how to avoid paying overtime to the lowest paid workers who are supposedly helped by the new rule.

For example, here is a list of what they have put out to employers—I might say probably to unscrupulous employers because honest employers are not going to do this anyway. If employers want to get around the rules,

the administration is telling them how to do it.

They are suggesting how employers can avoid paying overtime. First, they lower existing wages so when workers accrue overtime, their net pay will not grow. In other words, reduce their pay, work them longer hours so that the net effect is the same. So the workers will be working more than 40 hours a week but their pay will be exactly the same. Now, that is what has come from the Department of Labor. That is what they are telling employers to do to get around that provision in their proposal.

Secondly, they are saying change workers' duties so they are exempt from the overtime rules. Well, okay. So let's say someone makes slightly over \$22,100 a year. Therefore, they might be eligible for overtime. Just change their designation. Say they are something else. Put them under the category of exempt from overtime, and guess what; they are exempt from overtime.

If an employee is close to the \$22,100, what they are saying is, raise their wages to the level required to be exempt. So if someone is making \$22,000 a year, or \$21,700, just raise their pay to \$22,100, work them over 40 hours a workweek, and do not pay them any more overtime. That is the way to get around it. This is from the Bush administration. That is what they are telling employers to do. Lastly, do not let them work more than 40 hours a week.

Well, this sweeping proposal is in direct contrast to the intent of the Fair Labor Standards Act of 1938 that established the 40-hour workweek for America's workers. It is a slap in the face to the millions of American workers who depend on overtime pay to support their families and make ends meet.

We are not talking about spare change. We are talking about taking away some 25 percent of the income of American workers. It is essential family income that helps pay the mortgage, feed the children, pay for college, save for a rainy day, save for retirement.

Now, again, one can say do not let them work more than 40 hours a week, family time is premium time. For an American worker to spend time with their children at baseball games, basketball games, football games, or at school meetings, or just to be home with their families late in the evening or on a weekend is premium time. If an employer is going to ask an American worker, a man or a woman, to give up their premium time with their families, they had better pay them premium wages, which is what overtime is.

No. The Bush administration is saying, hey, this family-friendly administration—how many times have we heard that, “family-friendly administration”?—is now saying: Forget about it; if an employee wants to work overtime away from their family, we are going to make sure they do not get

overtime. Or if they need the overtime to pay for retirement and stuff, we are suggesting they do not work an employee over 40 hours a week.

Again, we already know that American workers are working more than what they have in the past and more than what they have done in other nations. If we look at this chart, we can see that American workers work more hours than workers in other industrialized nations. Here is the United States over here. Hours worked per employed person in 2001 is slightly over 1,800. Look at where it is in Denmark, France, Ireland, the Netherlands, the United Kingdom, Italy, and Germany. American workers are already working longer than any other workers in any other industrialized country.

What the administration is saying is we are going to work employees longer and not pay them any more.

It will not create one new job. It will give employers a disincentive to hire new workers if they can force their current employees to work more hours with no increase in pay. That is exactly what it is. It is anti-worker. It is anti-family. It is bad economic policy.

Congress did the right thing in voting to block this new rule. Now that Congress's vote and voice have been nullified, we are hearing from the Department of Labor that the new rule will go in in March. I am here to serve notice that just as I offered this amendment last summer, I will offer it again and again on any legislation that comes to the floor of the Senate. We will not give up, nor will others who have fought this fight with us. The American people will not allow us to drop this issue. They have been watching this issue closely because it hits so close to home.

Lastly, I was home over the break period and there was this cartoon that appeared in the Des Moines Register which I thought kind of summed it all up. Here is a police officer standing over a poor guy who looks as if he has been run over by a truck. The police officer is taking it down and he is saying: “You say the guy who took your overtime pay bore a striking resemblance to the one who gave it to you in the first place?”

So on the one hand, President Bush is saying we are going to raise the threshold so that employees are covered by overtime pay provisions. On the other hand, they are saying to employers: This is how to get around it. Here is how employers can get around this proposed rule so that they can take overtime pay away.

The President wants to have it both ways. He wants to tell the American workers that he is going to increase their overtime pay. On the other hand, he is whispering to employers: Do not worry, I have ways you can get around it.

There is only one way, and that is the right way, which is to pay workers what they earn and what they deserve and to pay them the overtime they need and for which they have worked.

The administration can take care of this right now. They could take care of it, but they have nullified what they have tried to do in Congress. So I urge the administration to do what is fair and just for America's workers and withdraw this harmful proposal. It is the right thing to do, to withdraw it.

I say to this administration if you think this is just an issue with labor unions, you are sadly mistaken. Everywhere I went in Iowa and some other States during the long break period that we had, I heard about this issue. Not just from union workers; white collar workers, nurses, firefighters, and others in our society. Maybe they don't belong to a labor union, but they are going to be drastically affected.

This cuts very deep. I don't know who gave you the advice, Mr. Bush, but it was bad advice. You ought to get a grip on this, President Bush. Get a grip on this and tell your Secretary of Labor to rescind this proposal. Work with Congress. We can, as we have many times in the past, come up with something. The Fair Labor Standards Act has been amended many times but always through an open process with open hearings, the best information, and Congress worked with the administration. We have never had any contention. Certainly we could agree on that level, that \$8,060 level, that ought to be raised to \$22,000. It ought to be raised. But then don't put out information saying OK, here is how you get around it.

Let's raise it. Let's make it stick. Let's not exempt all these workers from overtime pay protection.

That is the right thing to do. This Congress, this Senate, and this Senator will continue to fight to make sure this rule does not go into effect and that we protect the legitimate overtime pay protections of the American workers.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I think this is quite a moment in history. It will be long remembered. It will be remembered for several reasons, not the least of which is the excessively optimistic tone that was issued by the President of the United States in his address on the State of the Union last night. Millions of people were watching and, I assume, thinking about the effects his thoughts will have on their lives.

It is presented as the Omnibus appropriations bill, but I think there is a better description than that complicated term that few in the public really understand. I would rather call it the “ominous” bill, and I am going to refer to it that way.

It is astonishing to me that we are here, nearly 4 months into the new fiscal year. Our friends on the other side of the aisle who control the White House, the House of Representatives, and the Senate, have failed to move through the Senate the result of the

conference with the House. It is an indictment of failure, an indictment of failure to govern.

The basic problem with this bill is that in an age when we are so conscious of saturated fats, this bill is saturated with special interest provisions that bring harm to the well-being of our constituents. In some cases, the bill even threatens the health of the American people.

For instance, stuck deep in this bill is a provision that blocks the country-of-origin labeling rules for agricultural products, including beef. In the wake of the mad cow scare, it is more critical than ever that Americans get more information about beef and other products they eat, not less information.

The bill also, regrettably, undermines workers' rights. Even though both the Senate and the House—both houses of the legislature—voted in favor of blocking the administration's new rule to deny overtime pay to 8 million Americans, this omnibus report allows the rule to go into effect.

The question is, How did it get there? You have heard me say that both the Senate and the House voted in favor of blocking the administration's rule to deny overtime to people, deny their just compensation from coming to them. How does this report ban that, those consensus votes? The President's overtime rule amounts to a 25-percent pay cut, on average, for millions of hard-working Americans, including police, firefighters, emergency workers, nurses, and many others. Many of these people are veterans. It amounts on average, according to the Economic Policy Institute, to \$161 a week in lost wages—\$161 a week. That is \$8,000 a year that will be taken away by this rule.

It doesn't say you work less. The amount of time you work may be the same. But you are going to lose part of the compensation that you currently earn if you work those hours. It is a very important addition to the average week's pay.

Congress voted to stop this unjust rule. But the omnibus allows it to move forward. Is that how democracy works? Congress speaks clearly, unequivocally, on an issue and the White House comes in and tells the conferees: Hey, forget it; we don't care what the people in the Senate or the House in a majority vote want. You have to do what we tell you to do. And we are going to hold billions of dollars in funding hostage until you agree with us.

That is not democracy; that is extortion.

The overtime rule is not the only provision in the conference report put there because of this extortion. To clarify, there are lots of things in the appropriations bill. Some of them we would like to see put into place. But the administration, in a cute trick, held them out for ransom to pass this omnibus bill.

For instance, if you vote your conscience, you are going to lose your

money. Your constituents are going to lose their money. The States and cities across this country are going to lose their money. If you dare to vote your conscience and do what is right, we are going to take away the funding that is justly yours.

There is another gift to corporate special interests in the omnibus, the new media ownership rules. Current media ownership law prevents a single company from owning local TV stations that reach more than 35 percent of the Nation's households. In most totalitarian nations there is usually only one or two broadcast stations that are controlled by the government. In this case, they are held by people who have a particular view of how society ought to get its information.

So in fairness to the constituents, the citizens across the country, we made clear that ownership of those outfits was to be held to a particular percent. In 2002, the FCC proposed raising the limit to 45 percent. Majorities in both the House and the Senate voted to block this FCC rule to weaken media ownership rules—to expand it for the fat cats who presently own it to let them foist their opinion all over America without rebuttal.

Congress spoke clearly. We said no. Leave these caps where they are. There is a reason and there is a value to them.

But in the conference on this omnibus, the limit was raised from 35 percent to 39 percent—some arbitrary act. By whom? We can't say around here. It is an odd-sounding number. Not coincidentally, that is the number just big enough to accommodate Mr. Rupert Murdoch in his effort to allow his conservative views on his media empire to have more control over local TV news than is appropriate in communities across this Nation.

These problems are only some of the bad provisions contained in the omnibus.

I haven't even mentioned the worst problem in the bill.

This bill contains provisions that would help terrorists. I am heard correctly. I will repeat it. This bill aids terrorists who seek to harm the American people. A dangerous provision was snuck into this bill in the dead of night, put there by the Republican leadership carrying water for the gun lobby, that will help terrorists and criminals who purchase weapons to avoid detection by requiring the destruction of gun background checks. That is done to see if the person is stable or if they have any criminal connections, yet requiring the destruction of that information, that research, that investigation to be done in 24 hours.

What is the harm in holding that information and giving our law enforcement people a chance to further study it?

Some on the other side may say that "terrorists don't buy guns on the legal market in the United States." But

they do. In fact, the Bush administration has indirectly assisted them in the acquisition of guns.

A recent audit of a small sample of gun background check data by the Justice Department reveals that at least 12 suspected terrorists and perhaps hundreds purchased firearms in the United States last year. How did the Department of Justice find this out? By looking at gun background checks data.

But this ominous would change the law so that records of gun purchases are destroyed within 24 hours of sale. The logic to that escapes me and lots of people. I hope the American people pay attention to that. The Brady law calls for these records to be held up to 6 months. The current practice is to hold the records for at least 3 months so that there can be a second review or a second check.

If someone is on a terrorist watch list, they certainly ought to report it immediately to the FBI or the CIA or whoever it is that is going to follow up on this information if the war on terrorism is as serious as it ought to be. If the Republicans' 24-hour destruction rule were put into place, no audit or other investigation of terrorist activity involving weapons purchases would be possible.

The administration is already dragging its feet when it comes to investigating terrorists who purchase firearms. Believe it or not, when a known terrorist purchases a firearm, the policy of the Justice Department is to withhold relevant information from law enforcement. Why is that so? Why is Attorney General John Ashcroft so concerned with the gun rights of terrorists? I can't figure that one out.

We only found out about terrorists acquiring guns from the audit of gun background check data. But now, if this ominous is enacted, records will be destroyed in 24 hours. What the devil is the urgency to destroy those records? Purportedly, it is so we don't have some file or big brother looking over your shoulders.

Talk to any of the people who had family members in the World Trade Center neighborhood that I come from and ask them if those records ought to be destroyed in a hurry. Or ask the people who lost loved ones in Pan Am 103. If any of the records—if any of those people associated with Libya and that group goes to purchase a gun, those records ought to be left open until they are totally combed. If a person purchases a gun and it is discovered that terrorists are planning to launch an attack somewhere in the country, the records will have been destroyed. Whom are we trying to protect?

Under the 24-hour destruction standard, we will not know where the purchase was placed or when or what firearms were purchased. The loss of this data puts our communities at risk and hinders the ability of law enforcement to prevent terrorist attacks. Does that

make America safer? I am sorry that the President last night in his speech didn't object to having that held over our heads legislatively now.

In their zeal to please the National Rifle Association and other special interest gun groups, the majority is willing to undermine homeland security and individual security and put our communities in danger. So I ask the majority: Whose side are you on anyway? You really have to wonder when the Republican leadership decides that the protection of the anonymity of gun-buying terrorists is more important than protecting our country from terrorist attacks.

My home State, New Jersey, lost 700 people on 9/11. I would like someone from the other side of the aisle, or someone from the Justice Department, to sit down with those families, many of whom I know, who lost loved ones, and explain to them why we should destroy these records so quickly. Explain to these families why we need to protect the terrorists' identity when they try to buy a firearm. It is an outrage.

The majority claims that they care deeply about homeland security. I am sure they do. But in practice, when homeland security collides with gun rights, homeland security goes out the window.

I was a member of the Appropriations Committee for 18 years. The committee has always done its work in a bipartisan fashion. It is sad to see that bipartisanism evaporate at the snap of Karl Rove's fingers.

I say to my colleagues on the other side of the aisle: Let us take the pollutants out of this ominous bill. We have a responsibility to fund critical government programs without adding misguided or downright dangerous legislative riders.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GREGG. 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. GREGG. Mr. President, I will speak on the issue of the education funding in this omnibus bill which is being held up by our colleagues on the other side of the aisle, which is unfortunate.

The issue of education, of course, is one of the priorities of our concerns in Congress. We have made significant strides under President Bush in addressing a variety of different areas involving education, and this omnibus continues that progress. It is interesting to note the commitment which we as a Republican Party and the President, under his leadership, have made since coming into office.

The commitment to education, specifically, has been dramatic. For example, in the area of No Child Left Be-

hind, which is funding for low-income disadvantaged students, as compared with the prior administration, in the last 3 years we have seen a 32 percent increase in funding, going from \$18.4 billion up to \$24 billion. In the Title I account, we have seen an increase of 41 percent, going from \$8.8 billion to \$12.3 billion. In the area of special education, we have seen a 59 percent increase in funding, going from \$6.3 billion up to \$10.1 billion. In the area of funds going to K through 12, totally, we have seen an increase of 36.5 percent, from \$26 billion to \$35 billion. In the area of Pell grants, we have seen an increase, going from \$8.8 billion to \$12 billion, or an increase of 37 percent. That is in the last 3 years of this President.

This bill carries forward those initiatives. The fact this bill is not passed and the Democrats insist on holding it up will represent a very significant cut in the amount of money that would have gone into title I, which is education for underprivileged children, into special education, and into Pell grants.

If we go under a continuing resolution, which is the other option to not passing this omnibus bill, it will mean title I will end up being cut by over \$650 million. Those are dollars that go out to low-income kids, to schools that educate low-income kids, which is critical to bring these children up to speed so they can compete with their peers and have a chance at the American dream.

In addition, in the special education area, if this bill is not passed, it will represent an approximately \$1.2 billion cut in special education. Anyone who goes back to their State and spends any time with their local communities knows the cost of special education is one of the most difficult issues which the local education community faces because the Federal Government requires, as rightly it should, that children with special needs be educated and be educated at a level competitive with their peers who do not have special needs.

Unfortunately, that is very expensive. Originally, the Federal Government said it would pick up 40 percent of the cost of that education, but it has not been doing that. However, since President Bush came into office, we have dramatically increased our commitment in the area of special education. As a result, we have been able to reduce the burden on the local property owner because more money has been going out from the Federal Government to bear its share of special education, thus relieving the local property tax owner from having to bear not only the local share of special education but also the Federal share of the special education. If this bill is not passed, that is \$1.2 billion of additional spending for special education which will not occur, which will mean that burden will be thrown right back on to the local property tax payer. That is

certainly not something we should do. We have an obligation to try to get to full funding of the Federal share of special education. The President has made that commitment and we are on that path. This bill is part of that effort.

Pell grants is another example. We all know it has become very difficult for people who are going to college today to pay the cost of college because college tuition has increased so dramatically over the last 10 years, outstripping the rate of growth of inflation by a factor of about two and a half times.

One of the ways we have tried to relieve that burden is to increase the amount of money or to increase the amount of people who participate in the Pell grant program, which is a grant program which helps kids who are in college pay for their college tuition. If this omnibus bill does not pass, the Pell grant program will be penalized with a loss of tens of millions of dollars which would be available for college students in order to help defray their cost of education so when they get out of college they can participate aggressively in the workforce and earn the rewards of participating in the workforce without having the huge burden of debt placed on them by having to pay for their tuition costs and borrow money to do that but, rather, by having a Pell grant, which is not a loan.

This is a critical issue for us as a country. As the tuition rates go up and up, it has become more and more difficult for many people to participate in college education. We as a society cannot compete in the world unless we have a highly educated workforce. That highly educated workforce is conditioned on people being able to afford college. This bill allows a lot of people to participate in college who will not otherwise be able to.

We can honestly say if this bill is held up, low-income kids who go to title I schools will not receive the support they need, kids who are special-needs children will not be receiving the support they need, and the local taxes of people will go up as their real estate tax burden will go up, and many kids who are attending college will be unable to continue their college because they will not be able to obtain the Pell grant. There are real lives at risk if this bill is not passed in its present form.

There are other things this bill has that address education which are equally interesting and equally, in my opinion, significant. The most significant is the fact this bill includes the District of Columbia's efforts to pursue other options for their children in the area of education. The Mayor of the District of Columbia, the head of the school board of the District of Columbia, members of the city council of the District of Columbia came to Congress and asked those in a position to deal with education issues, Will you help us do some more creative things to try to



address a very serious problem in our school districts?

The serious problem is this: Washington, DC, spends the second most per child of any school district in the country. The only other school district in the country that spends more per child is New York City. Yet Washington, DC, has the worst performance for its children of any school district in the country; in fact, the worst in many categories. A lot of parents feel their children are trapped in schools that are not working. The Mayor appreciates this and wants to improve the school system but wants to give parents other options. They have in this town a private proposal, a private program for kids whose parents want to send their kids to a private school through a choice program, take them out of the public schools and put them in a private school. There are 7,500 kids waiting to participate in that program.

The Mayor and the head of the school board and members of the city council came to us and said, We would like to try a demonstration program in the area of choice where we will basically set up a fund which allows parents—most of these are single parents, by the way—from very low-income situations to take their kids, if they are not performing and they are not getting the support they need in the public schools, to a private school as long as that private school subscribes to the standards we as a city public school system set both in the area of accountability and in the area of teaching those children.

It is a creative and courageous idea the Mayor has put forward along with the president of the education board and along with members of the city council—courageous, obviously, because it flies in the face of the professional education community, and especially the unions.

But the mayor is committed to trying to improve the educational level of the kids in Washington. He simply is not willing to accept the idea of generation after generation of children here in Washington being left behind and not being able to participate in the American dream because they cannot get the education they need.

When you have parents who are waiting, enthusiastically, to try to give their children an option, to try to give their children an opportunity, which does not exist today, by moving their child from a public school to a private school, when you have parents who are willing to take that risk with their children, and you have a mayor who is willing to do that, then you have a formula for maybe improving the lives of these children.

The mayor came to us and said: Give us this program. We would also like a program which helps us support more charter schools in the city and helps us do more school improvement in the basic public schools.

So we put together a package where we took \$40 million out of other ac-

counts within the Federal Government. I know because a significant amount of that \$40 million came out of my own appropriations bill which has nothing to do with the city of Washington, and we moved that money into the city of Washington account. We divided it into three parts, and we structured it so that the mayor and the board of education and the council can set up three programs: One, to assist in the creation of charter schools; two, to add to the improvement of schools that already exist in Washington, the public school system; and, three, to have a choice program system. It is a creative and aggressive idea.

But if this bill does not go through, that program will fail. The mayor and the people who are committed to this, and, most importantly, the children who would benefit from this and their parents—and it is heartrending to meet these parents.

They have a lottery right now in this city where the private program—which is funded privately, which is the philanthropic program—every year draws out of a hat a group of names of kids who qualify to take part in the choice program. Literally thousands of parents, single moms in most instances, sit in that room and wait for their child's name to be drawn. When their child's name is not drawn, it is tragic, and the sense of loss is palpable. And when their child's name is drawn, the excitement that their child will have a shot at the American dream because they will get a decent education is electric.

So the mayor has set up this program, working with the president of the board of education and with members of his council, and they came to us and asked for this money.

Unfortunately, Members on the other side of the aisle have tried, in all sorts of ways, to defeat this program. It is ironic that they have because there are not a whole lot of Republicans serving in the municipal government in the District of Columbia. In fact, I do not think there are any. I don't know. I suspect there are not. I think only 12 percent of the people in the city are registered Republicans. The mayor is Democrat. I know the board of education is democratically controlled. The council is democratically controlled. The whole administration is democratically controlled.

It was, ironically, the leadership of the city, a Democratic leadership, that came to a Republican Congress and said: Give us this opportunity. We will take it. We will run with it. We will make these children's lives better and give their parents a chance to give their children something special.

Unfortunately, they were stonewalled, regrettably, by the other side of the aisle, but we were able to get around that and we were able to put in this bill the language which accomplishes this. If this bill fails, then that program fails, and it will mean that \$40 million—which is a huge amount of

money—which would flow into the educational efforts here in Washington to try to improve those educational efforts—not by putting more money after money that has not worked in the past but, rather, by putting more money in programs which have a potential of working, and which we know will work in specific instances, such as charter schools and choice—that money will not go forward. That money will be a benefit, and there will be real lives impacted in a very positive way.

So we have seen a lot of crocodile tears from the other side of the aisle about their concern on education, about their concern about children. Where the rubber hits the road is whether this bill passes or not. A lot of children's lives here in Washington will be affected. If it does not pass, they will once again be put in a system which has failed them and failed their peers. And, regrettably, it has failed generations before them. If the bill does pass, there will be an opportunity, created by a creative and aggressive mayor who is willing to take chances.

If this bill passes, there will be relief for many taxpayers in America who are paying the burden of the Federal Government's share of special education. There will be relief on their property tax bills.

If this bill passes, people who are going to college will be able to stay in college, and they will not have to leave college because they can no longer afford to pay for it.

If this bill passes, title I children, children from low-income homes, will have a better shot at not being left behind because the No Child Left Behind bill will be more aggressively funded.

So there are real lives affected by whether or not this bill passes. I hope Congress will see fit, and our colleagues on the other side of the aisle will see fit, to stop this filibuster and pass this bill so these students can get on with their education.

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

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

The Senator from Florida is recognized.

Mr. GRAHAM of Florida. Mr. President, as fate would have it, the first vote this new session of Congress has before it, as our first measure, is an omnibus appropriations bill for fiscal year 2004.

This first-of-the-year appropriations bill is the product of negotiation among the leadership, primarily Republican leadership in this Chamber and their House counterparts, to meld together a series of appropriations bills



that had been unable to be passed prior to the time of our adjournment in 2003 and have now been presented to us as a single bill.

This single bill will provide for discretionary domestic spending of \$328 billion—\$328 billion. In fact, it contains over 7,000 earmarks, which means specific projects that have been added to this bill, almost exclusively projects that were never considered by the Senate.

Senator McCain has given a speech, as has Senator Byrd, outlining adequate reasons to vote against this omnibus bill based on those facts alone. I would probably have voted against the bill based on those facts alone because I consider myself to be a fiscal hawk, and I consider that the kind of spending in this bill is illustrative of the undisciplined practices into which this Congress and this President have too often fallen.

But that is not the reason I am going to discuss today. It is the fact of what is not in this bill. What is not in this bill is a provision which was adopted on a bipartisan basis by the Senate and by the House of Representatives which would protect the overtime rights of our Nation's workers.

A brief background. In 2003, the Department of Labor developed a regulation which would modify the current overtime pay standards. The practical effect of this will be to make some 8 million American workers, who are now eligible for overtime, ineligible for overtime.

My colleague and good friend from Iowa, Senator Harkin, who also has spoken eloquently on this matter today, offered an amendment to protect the overtime our Nation's workers earn from this new Bush administration policy.

Senator Harkin's amendment passed the Senate by a vote of 54 to 45. That same measure was then endorsed by the House of Representatives when they instructed their conferees, who would be responsible for negotiating any differences between the House and the Senate bills, to accept the Harkin amendment by a bipartisan vote of 221 to 203.

In spite of that history, this provision, which would have rolled back the Department of Labor's denial of overtime to 8 million Americans, was removed from the bill, ostensibly at the insistence of the White House.

I have had a practice, now for almost 30 years, of taking different jobs. My next-to-the-last job was as a coal compactor. That consisted of driving a very big piece of equipment, made by Caterpillar in Peoria, IL, over a large field of West Virginia coal in order to keep it at the necessary compaction so that it would not be subject to self-ignition and fire. There were three other men who worked with me in that job. It took place at the Gainesville regional utility generating plant.

At the lunch break, we avoided talking politics. That is sort of my rule

when I am on these workdays. I talk about hunting or fishing or football or whatever but not politics. These three men brought it up at lunch. They said: We heard somewhere that they are talking about messing with our overtime.

I said: Well, how much will this affect you?

They said: It will affect us a lot because we typically work maybe 50, 60 hours a week doing this job, and that overtime is what makes the difference between us sort of getting along and getting along with a little extra money to do the things our families need.

I cite that example to indicate this is not an inside-the-beltway issue. This is an issue which the American people understand and about which they are emotional.

Under the Bush administration's overtime plan, millions of salaried workers who make between \$22,101 and \$65,000 a year—just think how many millions of families fall within that range of \$22,101 and \$65,000 a year—could be reclassified under more lenient standards as executive, administrative, or professional employees and would no longer qualify for overtime.

I indicated earlier that the plan would affect approximately 8 million workers in 257 occupations. This is the estimate of the Economic Policy Institute, that that many workers in that many occupations would lose their right to overtime. In my State of Florida, the change is estimated to affect 441,000 workers. Those numbers dramatically understate the real impact of this legislation.

Let me give two illustrations of its extended impact. We are concerned about a jobless recovery. Yes, the stock market is up. Yes, we are showing a significant increase in our domestic economic output. But in the month of December, do you know how many jobs were created as a result of all that economic activity? One thousand. I have not made a mistake. I didn't misstate 100,000 or 150,000. One thousand new jobs were created in the month of December.

While there is no single reason that that is true, I believe one of the reasons is the math I am about to give you. Assume you are an employer. You have four employees. As part of this economic upturn, you have generated enough demand for your product that you really need to hire a fifth employee. So you have a choice: Hire a new person or you can ask the other workers to add 10 hours a week to cover the amount of additional demand that has been generated. Assuming these workers earned \$20 an hour, that would mean that while they are in their overtime period, they would be earning \$30 an hour. So each of the four people would earn 10 hours at an additional \$10. So they would earn, as a result of overtime, \$100 a week times the four workers which is \$400 a week.

The employer could very well look at those numbers and say: Look, it is less

expensive for me to pay these existing employees an additional amount to work overtime than it is to undergo the training cost and the insurance cost, particularly the health insurance cost, of bringing a new person on board.

I believe this extensive use of overtime is a significant factor in causing a jobless economic recovery. If it is a significant problem today, when the employer is having to pay an additional \$10 an hour in overtime, think what it is going to be like when the employer doesn't have to pay the additional \$10 an hour in overtime, where the amount of work that the four current employees do would be paid at the same rate as those four plus a fifth working at 40 hours a week?

No. 2 is another example. A plant has 100 employees, all of whom are currently eligible for overtime. Under these new rules, let's say that 20 of those 100 are reclassified as being ineligible for overtime. The plant has a certain number of hours of overtime which are going to be incurred. Today they are distributing that among the 100 overtime-eligible employees. I can tell you with a high level of confidence that if we allow this Department of Labor regulation to go into effect, whatever overtime is generated in that plant is going to be assigned to the 20 employees who no longer are eligible to get overtime pay.

At a time of a jobless economic recovery, to propose cutting overtime earnings, which will give an even greater incentive not to employ people, is to cause one to question the common sense of the people who are proposing this. This plan offers no incentive for economic stimulation. It is an incentive to further reduce employment by relying on now no longer overtime compensated additional hours of work by your current workforce.

This also offers no economic incentive to our general economy. We have debated this issue for much of the last 3 years: What is the most appropriate way to stimulate the economy? Last night the President didn't talk about changes in trade policy. He said we were going to stimulate the economy by making tax cuts permanent.

As Senator Byrd discussed with vigor and eloquence a few hours ago, 75 percent of these tax cuts go to 1 percent of the American taxpayers.

That is not a program of economic stimulation. Rather, it is a program to compensate the most affluent people in the country by cutting their taxes and letting the crumbs of the other 25 percent of the tax cuts fall down on the rest of us.

If we were serious about economic stimulation through the Tax Code, we would have a different tax cut policy. I have advocated, as an example, that we ought to have a program to make the first \$10,000 of earnings free from the payroll tax. That would put approximately \$780 in the pocket of every American, the largest share of which

would go to where the largest share of Americans are—into the middle class. I can tell you, from common sense, those people will actually spend the \$780 because they have kids who need new clothes; they have a car that needs to be replaced; they have a new bedroom they may need to add to the house because they just had another child.

We didn't take that approach. We didn't focus our tax cuts on the Americans who are most likely to use the tax cut to stimulate the economy by increasing demand. Having committed that first error, we are now about to compound it by taking away overtime pay from the same group of Americans who, if they get the overtime, are most likely to spend it, create demand, and create new jobs in our economy. It is just confounding that, at a time when we are concerned about the future of this country and we are concerned about economic stimulation, when we have concerns about the fairness by which our people are viewing their Government's action, we would go an additional mile to cut away the eligibility for overtime pay for 8 million Americans.

This policy is not just bad economics; it is also bad security because many of the people who will be affected by this are people who are our first responders. They are police officers, firefighters, air and traffic controllers, nurses, and others involved in emergency medical care. All of these will potentially see their wages diminished as a result of this one provision in a bill which does not justify passage even on its own merits—a provision which has stripped out a proposal that passed by bipartisan majorities in both the Senate and the House, passed at the instance of the White House, wanting to assure that its policy of cutting back on average American workers' overtime is implemented. I would vote against cloture on this bill today; I will vote against cloture on this bill tomorrow; I will vote against cloture on this bill at any time we have the opportunity to do so. And should we, in a moment of lack of wisdom, grant cloture and this bill is passed, then I will join my colleagues in every effort to see that what the Congress of the United States wants to happen, what the people of the United States desperately want to happen—which is to retain their overtime pay benefits—will occur. Even though it is not what President George W. Bush wants, this will be a battle the American people will win.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, it had been my hope we would have eliminated the overtime pay provision, because I believe it is not a good idea, with the economy just beginning to recover—obviously fragile—to be denying many American working men and women overtime pay.

This issue came before my subcommittee, Labor, Health, Human Services and Education. By a vote of

54-46, the Harkin amendment was passed, which prohibited any funding to implement the new regulation on overtime pay. There is no doubt it would be useful to revise the regulation with the view to limiting and reducing litigation. We had an extensive hearing yesterday. The Secretary of Labor testified. We analyzed the current regulations, we analyzed the new regulations, and it was apparent the new regulations will not do anything to reduce the litigation. There are still the same ambiguities regarding the various categories of personnel, making it evident from the course of the very extensive hearing we had yesterday that the objective of reducing litigation will not be accomplished by the new regulations.

In approaching the cloture vote, we are not between a rock and a hard place. We have an impossible situation because, either way we go, we are going to have this regulation, unless there can be a negotiated change with the administration. After making that effort repeatedly for months, I do not think that is a realistic possibility. We are faced with this regulation whether we pass the Omnibus Appropriation bill or not. If we do not pass the Omnibus appropriation bill, then we will have a continuing resolution, and the continuing resolution will leave in effect the current funding for the Department of Labor, Health, Human Services and Education, and all of the other departments that are affected by the Omnibus bill. With a continuing resolution, there will not be any provision to prohibit the implementation of the regulation.

If the alternative is followed, the result will be the same. If you have the Omnibus appropriation bill in its present form, which does not have the prohibition against implementing this overtime regulation, then the regulation goes into effect. So either way you go, you have the regulation. So that we are not between a rock and a hard place; we are faced with this regulation on either alternative.

If we do not pass this Omnibus appropriation bill, there will be very many important projects that will not be funded. If you take the Department of Labor, Health, Human Services, and Education, and the subcommittee which I chair, there is an addition of \$3.7 billion this year, with substantial additional funding for the National Institutes of Health, with substantial additional funding for education, and substantial additional funding for Head Start. We really do not have a choice.

Last November, when the omnibus was taken up, the chairman of the House Appropriations Committee, Chairman YOUNG, the chairman of the subcommittee, Chairman REGULA, chairman of the Senate Appropriations Committee, Senator STEVENS, and I met and tried diligently to work out an accommodation to delay implementation of this regulation until the end of the fiscal year. We were not asking for

very much. Now it is January 21, and the Secretary of Labor says the regulation will be ready for being promulgated on March 31. I doubt very much that will happen. Yesterday, in the course of the hearing, I asked the Secretary a detailed set of questions to see how many comments she had. Reportedly, it was some 80,000. After the regulation is promulgated by the Department of Labor, it has to go through the OMB, and that takes a long time. At March 31, we already will have half of the fiscal year gone. It will not be much of a concession by the administration to allow this regulation to not be put into effect until the end of this fiscal year and to take up the alternative legislation, which I have introduced, that would provide for a commission. But we face a situation where we have been unsuccessful in months of negotiations to try to effect a change on this issue.

This is part of the political process. It would have been my hope that the Secretary, who comes to our subcommittee with frequent requests that we have accommodated to the maximum extent possible, in the spirit of reciprocity would have accommodated us for a few short months. But in view of the fact that this regulation will take effect whether we pass the omnibus or not, the continuing resolution will leave the regulation in effect. The Omnibus appropriations bill will leave the regulation in effect.

It is obviously preferable to have the omnibus pass, where we have the additional funding, \$3.7 billion, for the subcommittee for very important items. That is why I feel constrained, notwithstanding my very strong objections to this regulation on overtime pay.

I think it is not appropriate, not really fair to the American working men and women that a few extra months were not commissioned to try to bring some clarity. I agree with the proposition that we ought to take every step we can to clarify the regulations to eliminate litigation. But on this state of the record, the least undesirable alternative is to have cloture imposed and to try to pass this bill.

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. KENNEDY. 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. KENNEDY. Mr. President, one of the worst provisions in this shameful bill is the provision that will take away the right of overtime pay to millions of loyal and hard-working Americans. That provision also shows the enormous gulf between what the Bush administration says and what it does.

Again and again, President Bush talks about providing economic security for all Americans, and then he

quietly tries to deny millions of workers their basic right to overtime.

If you have to work overtime, you deserve overtime pay. No employer should deny you that right, and no President and no Congress should take it away from you.

In his State of the Union speech last night, the President said his jobs and growth agenda would include "relief from needless Federal regulation." Apparently, he believes protecting employees' overtime pay is a needless regulation.

Millions of employees across America disagree with that. This proposal makes clear that the Bush administration is working overtime for the corporations and against the workers of America. We are fighting a war in Iraq, and this President and this administration is also waging a war on workers here at home.

Thirteen million children are going hungry every day; 8 million Americans are unemployed with no jobs in sight; 7 million workers have been waiting since 1997 for the raise they deserve in the minimum wage; 90,000 workers a week are losing their unemployment benefits. They can't find jobs in the Bush economy, and the President took away their unemployment benefits, too. And more than 8 million workers will lose their overtime pay because President Bush says they don't deserve it.

Majorities in both the Senate and the House agreed that the Bush administration was wrong to deny overtime protections to workers, and by a vote in the Senate and a vote in the House of Representatives, we said to the President: You are wrong. But here it is. They took it out of this bill behind closed doors at the last minute, and now they expect Congress to accept that because the vote is on this larger bill.

We could change this bill in a minute and send it on to the President, and that is what we ought to do. We know for whom we are fighting on this issue, and we know why we are fighting—for their right to keep the overtime pay they deserve.

We are fighting for the nurse who burns the midnight oil day in and day out caring for the sick and the elderly. We are fighting for the firefighters, the law enforcement officers, the first responders—the heroes of homeland security—the men and women standing watch and working night and day to protect our safety. They are our generation of Paul Reverses prepared to act when danger comes. They deserve fair pay for all they do.

We are fighting for our veterans and for our men and women serving so bravely now in Iraq and across the world who return to civilian life only to find that the training they learned in the military will now be used to deny them their right to overtime pay.

I want to point out what this proposed regulation under professional employees is all about and what it

states. I will include the whole provision but included in the provision—listen to this, Mr. President—is:

The word "customary" means that exemption is also available to the employees in such professions—these will be the people who are included in the rule and, therefore, ineligible for overtime—it says:

The exemption is also available to employees in such professions who have substantially the same knowledge level as the degreed employees—

Those are generally the 4-year degree employees to whom they are referring, but who attained such knowledge through a combination of work experience, training in the Armed Forces—

Training in the Armed Forces. This is the first time they have included that you can be ineligible for overtime pay if you have been trained in the Armed Forces.

I say to my colleagues, what are the kinds of training they get in the Armed Forces? The Army, for example, offers new recruits a choice of over 200 occupations, each of which includes training and a listing of the civilian occupations for which training could help them find a job. This proposal would punish the veterans with loss of overtime protection precisely because they have received the exact same training that is used as a recruitment incentive.

The military trains service members for hundreds of occupations, including lab technicians and other health care occupations, information technology, engineers, drafters, designers, air traffic controllers, communications specialists, law enforcement, firefighters, security personnel, journalists, and the list goes on.

If you go into the Armed Forces, you serve in Iraq, you come back, you have received training programs. Under these regulations, you are ineligible for overtime.

That is unconscionable. Why did they put in the service members' training programs in the Armed Forces for the first time? This is put in for the first time in changes to the rules. This is the first time in the history of overtime, going back to the Fair Labor Standards Act, that they have included this training.

I am absolutely amazed, at a time when we are asking our service men and women to do so much and while they are in Iraq and elsewhere, we are passing a regulation in this omnibus bill that is going to say when they come back that if they have been trained in any of these areas, they will be considered, under these regulations, a professional and be ineligible for overtime, after they have been risking their lives for the American people. Does that make sense? Permit us to have an up-or-down vote on that, Mr. Republican Leadership? Permit the Senate to vote on that and see what the sentiment is? Oh, no. Just tuck it into the regulation, behind closed doors; put it in there with everything else and let it become law without giving Congress a say.

I do not know what that will mean in the future if that happens because we know that the incentives—one of the reasons that many young people go into the Armed Forces is because of the various training and educational benefits. Effectively, the Bush plan would do away with the standard requirement and allow equivalent training in the Armed Forces to substitute for the 4-year degree and therefore make these veterans ineligible. These training programs, as I say, have been a primary incentive for attracting people into the Armed Forces.

Do my colleagues understand that? It says here—I am reading right from it—training in the Armed Forces, and it goes on: Comma, or other intellectual instructions, training in the Armed Forces.

So that is what would happen to thousands of those men and women who are over in Iraq and Afghanistan, scattered around the world. They come on back. This proposal goes into effect. Their employer is going to look down and say, oh, Jim, by the way, you were in a training program before you went over to Iraq and you were trained, and it says in these rules here I do not have to pay you overtime because that is right in these rules.

So we are fighting for our veterans and fighting for our men and women serving bravely now in Iraq and across the world, who return to civilian life only to find that the training they earned in the military will now be used to deny them their right to overtime pay.

Most cynical of all, the Bush administration claims that its plan would actually entitle low-income workers to qualify for overtime. The Department of Labor has distributed guidelines to employers on the steps that they can take to avoid the need to pay that overtime. Just calculate the pay an employee now gets with overtime included and then cut the employee's basic pay enough to reduce the total to what it was before.

Is there anybody who doubts what is going on? This is basically a sop to companies and corporations around the country in order to squeeze employees even further. There are more than eight million out of work. Last quarter we found employment increased by only 1,000. They expected close to 300,000. It increased by only 1,000. There are so many workers who are eligible for unemployment insurance even though they have paid in for it, 90,000 at the end of this week which will be the end of all of their unemployment compensation. Did we hear anything about that last evening? I did not.

So is that cynical or what? How red-handed do we have to catch this administration before the American people understand what is being done to them? Always it is the Bush administration putting corporate profits over the well-being of American workers. The Department of Labor's mission is to promote the welfare of the job seekers, wage earners, and retirees of the

United States, and that is what it says on the Department's Web site. It does not say promote the bottom line for businesses.

The last thing American workers need in today's troubled economy is a pay cut like that. Staff Sergeant John Miller, who performs homeland security and other public safety duties in the District of Columbia National Guard, is concerned that he and many in his department will lose their overtime pay because of the Bush plan. He recently testified that eliminating overtime pay will have a devastating impact on his department's ability to perform vital public safety responsibilities. Without his overtime pay, he said his family could no longer afford their current mortgage or save for college for their two teenage children.

Thousands of veterans will lose their overtime pay as well. Under current law, workers can be denied overtime protection if they are in the category of the professional employees. In general, it is only workers with a 4-year degree in a professional field who will be classified as professional. The Bush plan will abolish this standard and allow equivalent training in the Armed Forces to be routinely substituted for a 4-year degree. How is that for a slap in the face to our courageous men and women fighting in Iraq?

Cutbacks in overtime pay are a nightmare that no worker should have to bear. Nationwide overtime pay makes up a quarter of a worker's total pay. The administration's policy will mean an average pay cut of \$160 a week for every worker. That is an outrage.

Hard-working Americans deserve a pay raise, not a pay cut.

It is wrong for the administration to try to force the unfair pay cut on them. More than 2 million jobs have been lost since President Bush took office. Unemployment is a massive problem, especially in hard times such as these. Overtime pay is exactly the incentive needed for job creation, because it encourages employers to hire more workers, instead of requiring current employees to work longer hours. We need a job creation policy, but all the Bush administration proposes is a job destruction policy.

The overtime pay requirement and the Fair Labor Standards Act has been a fundamental right of American workers for more than half a century. That basic law was enacted in the 1930s to create the 40-hour week. It says workers have to be paid time and a half for extra hours. Since 1938, that has been the law.

According to the Congressional General Accounting Office, employees without overtime protection are twice as likely to work overtime as those covered by protection. Americans are working longer hours today than ever before, longer than any industrialized nation. I will show this in the following illustrations.

This chart shows that Americans work more hours than workers in any

other industrialized nation in the world. The United States is right over here on this chart. We can also compare Denmark, France, Ireland, Netherlands, the UK, Italy, and Germany. This was in 2001. It is still relevant in terms of the current time. We can see workers in the United States work considerably more than any other country in the world. So they are No. 1 in the workplace.

The second chart shows that if one does not have overtime protection, this is what happens: Workers without the overtime protections are more than twice as likely to work longer hours, more than 40 hours a week without protection. Forty-four percent of workers who had no overtime protection worked more than 40 hours a week, compared to 19 percent of those with the overtime protection, well more than double. If it is more than 50 hours a week, those without overtime protection work three times longer than those who have the protection.

Who is affected by this? All one has to do is see under the recommendation of the Bush administration of the 8 million people, what are the classifications? It is very interesting. We are talking about police officers. We are talking about nurses. We are talking about firefighters. They are the backbone of the homeland security, the front line responders. The dangers we are facing from bioterrorism, who is out there first? The firefighters, policemen, and nurses. This proposal will effectively eliminate their overtime. We should not be eliminating it.

We ask them to take vaccines in a number of instances where we are unsure about what the outcomes are going to be. We do not even provide them with adequate compensation if they are going to get ill or sick as a result of it. We ask them to do all kinds of things.

Now their reward will be we will find that, under the proposal that is in this legislation, their overtime pay will be effectively eliminated.

The same department that is tasked to protect American workers and enhance the employer's workplace and enhance the opportunity for work in this country put out the proposal about how to avoid paying your employees overtime. That is courtesy of the Bush Department of Labor.

There it is. They just spell it out for us. The Department of Labor spells out how the employer can circumvent paying any kind of overtime if they are doing it even today, and gives every employer who wants to the way in which they can undermine it.

Congress cannot stay silent and roll over while more and more Americans lose their jobs, their livelihoods, their homes, their dignity, and their hope. We will be fighting other battles in this session, battles to restore jobs, guarantee fair unemployment benefits, raise the minimum wage. The place to start is here. Let's at least not allow the Bush administration to take the

country backwards on this fundamental issue, the right to overtime pay when workers are forced to work overtime by their employers. Let's preserve the overtime protections on which so many millions of working families across the country depend today. Why should their standard of living have to go down so employers can make higher profits by squeezing workers harder?

I would like to address one other issue that is related to the workers of this country, and that is the issue of the unemployment compensation. The Federal extension of unemployment benefits expired December 31 and 90,000 workers a week have been running out of benefits. The economy lost 2.4 million jobs since President Bush took office and at the December rate of job growth it would take 200 years to return to prerecession jobs levels. American workers can't wait that long. Nearly 15 million Americans are out of work, including discouraged and underemployed workers, and the number of long-term unemployed remains unacceptably high at 2 million.

Historically, job loss during a recession is about 50 percent temporary and 50 percent permanent. Today, nearly 80 percent of the job loss is permanent. As a result, many of the unemployed will not return to work soon.

Today, there is only one job opening for every three out-of-work Americans. The Republican leadership continues to paint a rosy picture of the economy while ignoring these workers. House majority leader TOM DELAY has said he sees "no reason" to extend unemployment benefits and the Bush administration has been silent on the issue. Democratic Senators have asked for unanimous consent to take up and pass a Federal unemployment extension more than a dozen times. Each time the Republicans say no.

The program was enacted in March 2002 and extended in January 2003 and May 2003. It provided 13 weeks of unemployment benefits in most States, and 26 weeks in high unemployment States. Today, due to the criteria used to define high unemployment, only one state qualifies as a high unemployment State, Alaska, despite continuing unemployment in many other States.

The bill would reinstitute and extend the Federal Unemployment Insurance Program for 6 months, and ensure that high unemployment States continue to be covered.

I see my friend and colleague on the other side. I have just mentioned to the Senate we are now at the point where we are losing 90,000 workers a week, those who are losing coverage on unemployment. We still have some 15 million Americans out of work, including the discouraged and underemployed workers. And the number of long-term unemployed remains unacceptably high—nearly 2 million.

Historically, as I mentioned, the job loss during a recession is about 50 percent temporary and 50 percent permanent. Today it is 80 percent permanent.

These are real people with real needs—families, mortgages to pay, food to put on the table. If we are going to have an expanding economy, it should not be done at the expense of one sector of our economy. It should be a tide that raises all the boats. There is no question that Wall Street is doing well. There is no question that a number of our companies are having extraordinary profits.

But we have these two issues, one denying the 8 million Americans the overtime, including veterans. And now we have a proposal to permit the extension of the unemployment compensation for those who have paid into the program and who are in dire need.

I ask unanimous consent the Senate proceed to the immediate consideration of S. 2006, a bill to extend unemployment benefits for 6 months, which I introduced yesterday; that the bill be read a third time, passed, the motion to reconsider be laid on the table, and any statements appear in the RECORD as though read.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Reserving the right to object, I need to find out what the request is. Unfortunately, I tell my friend and colleague from Massachusetts, the Senate has been in for a day, but I have not read his bill. I understand he introduced it yesterday. He wants to pass it today. Senator KENNEDY is a very effective legislator, but I personally have not had a chance to read the bill.

Will the Senator tell me what the essence of his bill is? Is it a program to double unemployment compensation extension to 26 weeks? Or extend the present program to 13 weeks?

Mr. KENNEDY. I say to the Senator, it is essentially the same plan we passed before. The bill will reinstate the insurance program for 6 months, ensure that higher unemployment States continue to be covered—13 weeks; 13 weeks. It is the narrower program.

Mr. NICKLES. I appreciate the clarification.

Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. NICKLES. Mr. President, two or three comments. Senator KENNEDY is my friend. We debated this issue a couple of times.

In the past many months, I guess for the last year and a half, there has been an effort to turn a 13-week program into a 26-week program. I have objected to that very strongly and will continue to object to it very strongly.

As I understand Senator KENNEDY's explanation, this is an extension of the existing Federal unemployment compensation program which is scheduled to expire by the end of March of this year. But I would like to point out a couple of reasons why I object.

I will be happy to work with my friend and colleague from Massachusetts to maybe learn in greater detail of his proposal, but just a couple of edi-

torial comments. No. 1, the unemployment rate is coming down. It is at 5.7 percent. In 1993, at the conclusion of a significant downturn and recession in the economy, the Democrats were in control of the Senate and they had a Temporary Federal Unemployment Compensation Extension Program. The unemployment rates at that time were between 6.6 and 7.7 percent. In other words, they discontinued the program when the unemployment rate was at 6.6. The unemployment rate today is 5.7.

I might mention the title of this program has been Temporary Federal Unemployment Compensation. It was temporary. I note today there are 26 States, over half of States have unemployment rates of less than 5 percent.

To have a national program for every State, which is very expensive, I am not sure is timely.

That is the reason we should have a chance to review this. Without having a chance to find out what the cost of it is, from what I have gathered and learned over the years, I object.

We have already spent, for the information of my colleagues, over the last 36 months I think something like \$30 billion. It is not an inexpensive program.

I might note that in the 1990s Congress spent \$28.5 billion. That was over 30 months when the unemployment rate was much higher—6.6 to 7.7 percent.

I might also, for the information of my colleagues, note that many States have not spent the \$8 billion of Federal funding that we transferred in March of 2002 for unemployment compensation. We transferred \$8 billion. According to the Labor Department, there is still \$5 billion remaining unspent by the States.

Those are reasons I objected to my friend's unanimous consent request. I appreciate his bringing this to the forefront of the Senate. It may not be the last we have heard of this. But this is a temporary program. I think some people would like for it to be a permanent program. This Senator does not want it to be a permanent program.

For those reasons, I objected to the request. I will be happy to work with my colleague, the Senator from Massachusetts, to see if we can't do something positive to help create an environment which is more conducive to more jobs for more Americans this year. I think we can do that in a variety of ways, one of which would be making the Tax Code more fair for the working environment. I will work with all of our colleagues to see if we can't have a more productive job-creating environment, one part of which would be to pass an energy bill.

We passed a good energy bill. I am not saying that what we had last year, which I guess is still on the calendar, was a perfect energy bill. But I believe there are thousands and thousands of jobs that could be created if we passed a positive energy bill.

I hope our colleagues will look at that and other measures maybe that would help reduce health care costs and other things that would create a more productive environment for job creation in the United States.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, just to respond briefly, as this chart indicates, our economy has lost 2.4 million jobs since the President took office. The job creation has been anemic. The economy created only 1,000 jobs in December. At the December rate of job growth, it would take 200 years to return to the level of jobs we had when President Bush first took office.

The reality is that the estimate of the administration was that we were going to create 300,000 jobs as a result of the tax cut. It is down to 1,000. The reason we have seen the move from 5.9 to 5.7 percent in unemployment is basically that so many people have been disillusioned. They have given up. We put this program in, which I support, at a time when unemployment was 5.7 percent, the exact same percent that it is now. But it is objected to.

It is true the plans are costly, but we know that the fund itself which the workers have paid into has nearly \$20 billion. This would cost about \$7 billion. That represents funds the workers have paid in for just this kind of rainy day. But no, we are being objected to.

In the early 1990s, Congress extended the unemployment benefit five times. That program did not end until the economy had more jobs than before the recession began.

This is a fair enough test, it seems to me. But when you have 90,000 Americans who have worked—these are Americans who have worked hard, played by the rules, have families, mortgages, and paid into the fund. The fund is in surplus, and we have 90,000 who are losing their coverage. This is a temporary program. It is short term—6 months, about \$7 billion, with nearly \$20 billion in surplus.

Workers are entitled to this kind of protection. They are entitled to a minimum wage. They work 40 hours a week 52 weeks of the year so they don't have to live in poverty. Most Americans believe that. They understand, for example, when we have the chance to increase the minimum wage that we have been blocked for 7 years. For 7 years, Republicans have blocked it. They block increasing the minimum wage. They block extending unemployment compensation. They initiate rules to eliminate overtime.

This is the record. When we talk about the minimum wage, it is obviously a women's issue because most of the people who receive the minimum wage are women. It is a children's issue because great numbers of those women have children. It is a civil rights issue because many of those who work at minimum wage are men and women of color. And it is a fairness issue.

We can't get the chance to vote on these matters. There is objection. How long did we hear last fall about, we ought to be able to vote on Medicare? Let the people vote up and down. But no, no, we can't with regard to the unemployment compensation. We can't get a vote on increasing the minimum wage. They have refused to permit this institution to have a vote again on the overtime limitations for 8 million people because there is objection. I think that is wrong.

We look forward to another opportunity to come back and address these issues in a way where hopefully we will be able to get a vote.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, it is a pleasure to see my friend from Massachusetts again. He is feeling good. He is energetic, as he always is. He is a very effective legislator and champions the cause with great enthusiasm. I appreciate that.

I will make a couple of editorial comments.

I love the chart. He said if we went at last month's pace of 1,000 jobs being created, it would take 200 years. That was 1,000 jobs last month. Over the last 5 months, 280,000 jobs were created, according to the Department of Labor. He forgot to mention that. But for December, I think he is correct as reported by the Department of Labor.

It is kind of interesting. He also said we have to have a vote on increasing the minimum wage but those Republicans haven't allowed us to do it. He said they haven't allowed us to do it for the last several years.

I remember a period with not necessarily the greatest fondest of memories. But for almost 2 years, the Democrats were in control. Senator DASCHLE was the majority leader, I believe from about June of 2000 or maybe 2001 until the end of 2002. He was the majority leader of the Senate. Senator KENNEDY was the chairman of the committee, and that could have been brought to the floor at any point during that time. The majority leader controlled the floor and the agenda of the Senate. It could have been offered as an amendment by any Member of the Senate, and it wasn't. I just make note of that fact.

It is interesting that it wasn't raised during that timeframe when this body was controlled by my friends on the Democratic side of the aisle. I want to just make note of that.

I don't doubt that we will have the pleasure of debating that issue. I look forward to that debate when that happens. I don't know that we want to make it against the law for anybody to work in the United States for less than \$6 an hour. Some people say if they didn't make \$6 an hour, they would be unemployed. I don't share that philosophy. But I guess we will have a chance to debate that. That is fine.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, very briefly, we will have an opportunity to debate this further. We were denied an up-and-down vote on the minimum wage just last year when the Republican leadership pulled the State Department bill from the floor rather than let us vote on the minimum wage amendment.

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

However, the word "customarily" means that the exemption is also available to employees in such professions who have substantially the same knowledge level as the degreed employees, but who attained such knowledge through a combination of work experience, training in the armed forces, attending a technical school, attending a community college or other intellectual instruction.

Ms. MIKULSKI. Mr. President, I voted to continue debate on the Omnibus because I believe we need to explore alternatives. Let me be clear: I want this bill to pass. I am proud of the work we did on the VA-HUD subcommittee to help our veterans, protect our environment, rebuild our communities, but I believe we need to pause.

We need to take a break and problem solve. There should be an alternative between passing an Omnibus that contains terrible provisions and a one year continuing resolution that would underfund so many of our priorities.

There must be a way to compromise and go back to the original seven appropriations bills, negotiated on a bipartisan basis, before provisions were added in the dead of night, outside the usual and customary conference procedures.

The Omnibus includes critical funding for our Nation's veterans. Working on a bipartisan basis, Senator KIT BOND and I increased funding for VA health care by \$1.5 billion over the President's request.

We said no to the administration's proposal to charge our veterans a \$250 membership fee for their healthcare. We said no to higher deductibles and co-payments. With record numbers of veterans seeking medical care through VA, with soldiers returning from Iraq and Afghanistan, we have a duty and responsibility to care for them. Promises made must be promises kept. The Omnibus funding bill allows us to keep our promise.

The Omnibus also includes increased funding for AmeriCorps—\$444 million—an increase of \$170 million over last year the highest funding level ever.

With this funding, more volunteers will serve our communities teaching in our schools, tutoring and mentoring our children, rebuilding neighborhoods, restoring parks, all while earning money to help pay for college, and learning the habits of the heart that make a difference for America.

The Omnibus adds \$500 million for the Clean Water revolving loan fund, and another \$6 million to improve water and sewer infrastructure that di-

rectly helps clean up the Chesapeake Bay.

Let me tell my colleagues what this means in my State of Maryland. The Chesapeake Bay is part of our heritage. It also source of jobs from the watermen to the restaurant owner. Yet the President's budget cut funds for this critical infrastructure program. That's why I fought to provide \$1.35 billion for water and sewer construction.

This funding means a cleaner Chesapeake Bay and new jobs right away—high paying construction jobs that will put people back to work clean our environment and prevent cost shifting to our local communities.

We have a chronic shortage of nurses in America. This bill contains a \$30 million increase for the Nurse Reinvestment Act—legislation I wrote that provides scholarships to nursing students in exchange for 2-years of service in areas that need nurses most.

The Omnibus increases funding for special education by \$1.2 billion. This is an important step toward the Federal Government fulfilling its obligations. When IDEA first became law, the federal government promised to pay 40 percent of the cost.

But Federal funding has never topped 17 percent that means local districts must make up the difference by skimping on special ed, by cutting from other education programs, or by raising taxes. I do not want to force States and local school districts to forage for funds, cut back on teacher training, or delay school repairs.

We need to make up the difference and help relieve a crushing financial burden on local school districts.

I fought hard to improve this bill to meet the day to day needs of Marylanders and the long range needs of our Nation.

So why do I want to pause—before we pass it?

Because we can do better. I want time to discuss and explore alternatives to provisions that were added in the dead of night and that cause real problems.

I believe the best social program is a job. You should be paid if you work. You should be paid overtime if you work overtime.

Yet the Omnibus allows the administration to gut overtime protections for 8 million American workers. The Bush proposal means workers will have to work long hours for less money.

It hurts nurses, police officers, fire fighters who are already stretched to the limit. This provision hurts working families struggling to make ends meet.

The Senate voted to block this provision. The House supported our efforts.

But then, in the dead of night, the administration strong-armed conferees to strip our protections out of the bill.

The administration should not be able to overturn the will of Congress without debate and without a vote.

The administration did the same thing to federal employees—twisting arms and going outside the usual and



customary process to push an anti-worker agenda.

The White House has a plan to contract out as many federal jobs as possible. It is a political agenda, masquerading as management reform. The Administration's plan for privatization costs money, costs morale, and costs the integrity of the civil service.

They have changed the rules to favor their contractor cronies, and now they have violated the democratic process. They know they do not have support in Congress or from the American public for their privatization agenda.

So they are using bully boy tactics and back room politics to bypass Congress and overturn a bipartisan compromise.

Let me tell my colleagues, what happened. During an appropriations conference, the House and Senate agreed to a bipartisan compromise that fixed some of the problems with OMB's new unfair contracting out rules but still recognized the importance of competition.

The compromise did not fix every problem. And it did not stop contracting out. But I supported it because it was fair, and I thought it was a good start.

My Republican colleagues supported it. And the White House supported it as well.

Yet now, the White House has gone back on the deal. They slipped a provision into the Omnibus spending bill that guts the bipartisan compromise and leaves us with meaningless "improvements."

This is disgraceful. The contracting out provisions in the Omnibus roll back workers' rights—the right to appeal a contracting out decision, the right to competitively bid on their own jobs. It even rolls back the requirement that contractors have to save money.

That is not what we agreed to in a bipartisan, bicameral compromise. We had an agreement that these three things were important. But OMB did not like it, because it would have given workers a fair shot.

Our country faces a new threat—the threat that mad cow disease will contaminate our food supply.

But, instead of taking this seriously, and doing everything possible to keep our food supply safe, the administration pushed to delay the country-of-origin labeling for meat products, overriding the will of the Senate.

Labeling of meat and meat products was supposed to go into effect this year, based on provisions in the 2002 Farm Bill. With this labeling, consumers could make an informed decision about what they purchased and what to feed their families.

Even with the first case of mad cow in the United States, administration will not back down from protecting its special interests friends. They made sure the Omnibus kept language delaying implementation of labeling for 2 years.

The Omnibus also rolls back existing gun laws and ties the hands of law en-

forcement. The Brady law requires that gun records be held for 90 days, yet this bill allows Government to destroy records after only 24 hours.

These records are kept for a reason—to help law enforcement track down weapons used in a crime, and to keep law breakers from buying guns.

The rollback provision also blocks the public from seeing critical information, even if they were the victim of a gun crime. If these rollbacks were in place last year, families of the DC sniper victims would not be allowed to know where the sniper got his gun and the questionable practices of the gun shop. Without this information, they would effectively be denied their day in court.

These provisions were not raised in the Senate. They should not be forced through in an omnibus.

I voted against cloture so the Senate has more time to discuss these important issues and explore the alternatives.

The American people deserve our best effort, not an omnibus rushed through in a single day.

There are serious problems with this bill—problems largely created by an administration that runs rough-shod over the democratic process and the will of Congress.

I am volcanic about how the final version of this bill was written.

As a member of the Appropriation Committee, I know first-hand the hard work and honest effort at bipartisanship went into the 7 appropriations bills.

All that went out the window once the administration forced itself into the room.

The underlying bill is a good bill that does a lot of good things.

We need to find a way to get back to those things and move forward for the good of America.

Mr. NELSON of Nebraska. Mr. President, more than 70 years ago, Nebraska Senator George Norris left Congress, returned to Nebraska, and led the effort to establish a unicameral legislature. He did this in large part because of his frustration with conference committees. These committees are supposed to reconcile differences between House and Senate bills, but all too often the bills that come out of these committees with new, controversial provisions.

Based on what I have witnessed, I have a renewed understanding of Norris's frustration with the conference committee process.

As we all know, it is in the conference committee that the final draft of legislation is often completed. Once the conference report is finished, a member may only vote to accept or reject; no amendments are allowed.

For this reason, the conference committee is an attractive opportunity to include legislative proposals that would not pass muster if they were considered openly on the floors of the House and Senate.

As Senator Norris wrote:

Members of conference committees are often compelled to surrender on important items where no surrender would be even demanded if consideration of the legislation were in the open . . . The individual legislator must then vote upon a conference report without any opportunity of expressing by his vote his opposition to anything that the bill in this form contains.

This is as true today as it was so many decades ago.

Too often, a conference report comes back to us with initiatives never discussed in this body, or worse, with provisions that were rejected outright months, weeks, or even days before. In a conference report, popular or necessary programs can be tied to unpopular or impractical ones, subverting the process by which we should consider legislation.

The legislative process is frustrated further when the legislation in question is labeled a "must-pass" appropriations bill. With programs awaiting resources sometimes months after the end of the fiscal year, there is an understandable desire not to drag out the process once the omnibus bill is finally completed. When a "must pass" appropriations bill leaves conference, the normal conference habit of including more controversial measures increases exponentially—as does the pressure to pass the bill without delay.

This is not how Congress should do business. Measures should be considered openly and honestly. They should not be tucked in during closed door meetings of committee conferees.

This year's Omnibus bill contains several controversial proposals, and while this is by no means the first time this has occurred, it is past time for it to end.

Included among those is a provision that would delay funding of COOL for 2 years. This could effectively end the program before it has begun. This program is believed to be an important element in our efforts to re-establish consumer confidence in foreign markets. Nebraska's beef exports to Asian markets amounted to more than \$460 million in revenue for our State in 2003. Without these and other markets, Nebraska could lose up to 21,000 jobs according to a Creighton University expert, severely hurting our efforts to turn the corner on the recent economic downturn. This may be the most important economic issue facing rural Nebraska. We need to act promptly in considering the impact of defunding COOL.

For this reason, I will vote to continue debate on the Omnibus bill. I do so in the hopes that this package can be re-examined and that the policy initiatives in it will be discussed as legislation, not appropriations.

This bill contains many promising Nebraska projects, some of which I worked with my colleagues and other Nebraskans to include. These projects and other spending initiatives are important to our State and to me. But I do not think that their importance

should allow them to be held hostage by a process that promotes the back-room inclusion of new, controversial, onerous and unpopular initiatives. It is my hope that with full debate on the bill, these last minute policy initiatives will be considered and openly discussed.

It is past time for Congress to end the process of using conference reports and appropriations bills to enact unpopular or controversial policies. Continuing debate on the controversial provisions of this bill is the first step in doing so.

Mr. President, I yield the floor.

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

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

#### UNANIMOUS CONSENT AGREEMENT—CONFERENCE REPORT TO ACCOMPANY H.R. 2673

Mr. McCONNELL. Madam President, I ask unanimous consent that at 6 p.m. this evening, the pending conference report be temporarily set aside; I further ask consent that the Senate then resume consideration of the conference report at 9:30 tomorrow morning, and further that there be 5½ hours equally divided for debate only; finally, I ask consent that following the use or yielding back of that debate time, the motion to proceed and the motion to reconsider the failed cloture vote be agreed to; further, the Senate then proceed to a vote on invoking cloture on the pending conference report with no intervening action or debate; finally, I ask unanimous consent that if cloture is invoked, the Senate then immediately proceed to a vote on the adoption of the conference report to accompany H.R. 2673, with no further intervening action or debate.

Mr. REID. No objection.

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

#### MORNING BUSINESS

Mr. McCONNELL. Madam President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

#### PREVENT ALL CIGARETTE TRAFFICKING (PACT) ACT OF 2003

Mr. HATCH. Madam President, I am pleased to inform my colleagues that we have reached an agreement on final language for S. 1177, the Prevent All

Cigarette Trafficking, PACT Act of 2003, which my friend Senator KOHL and I introduced on June 3, 2003. The manager's amendment makes the PACT Act even stronger than as introduced.

The distinguished Senator from Wisconsin and I originally introduced the PACT Act because of our concern that contraband cigarette trafficking both damages the economies of several States and contributes heavily to the profits of organized crime syndicates, including global terrorist organizations. When we reported this bill from the Judiciary Committee on July 31, 2003, I pledged to work with my colleagues on both sides of the aisle to address any and all concerns they had with the legislation. The result of this bipartisan effort is a piece of legislation that will prevent cigarette and smokeless tobacco smuggling and ensure the collection of tobacco excise taxes without infringing upon the rights of Native Americans or consumers.

Internet sales of cigarettes and smokeless tobacco are an impediment States face in their collection of tobacco excise taxes. A recent General Accounting Office report indicates Internet tobacco sellers rarely comply with requirements under the Jenkins Act of 1949 (15 U.S.C. §§375-378 (2003)). The Jenkins Act, as modified by this legislation, is a Federal statute that requires tobacco retailers to register with the tax authority for each State in which they sell cigarette and smokeless tobacco products and to file monthly reports providing shipment information within each state. Failing to comply with the Jenkins Act damages not only individual States, but also retailers that are put in unfair commercial disadvantage.

By ensuring the collection of state excise taxes from all tobacco retailers, the PACT Act will neither inconvenience nor hinder smokers and smokeless tobacco users in their ability as consumers to purchase the tobacco products of their choice over the Internet. This legislation merely removes any uncertainty regarding the scope of the Jenkins Act by explicitly mandating Internet tobacco retailers also comply with existing requirements under the Jenkins Act. This strong vehicle with which to collect taxes from Internet tobacco retailers will allow States to finally claim their rightful revenue and level the playing field for all tobacco retailers.

The PACT Act as modified by the manager's amendment also clarifies that the bill will not affect existing tribal compacts relating to tobacco tax collection on tribal lands and allows Native American Tribes to maintain enforcement authority over their own excise tax laws.

As I mentioned in June, law enforcement authorities have uncovered several instances in which organized crime syndicates are illegally funding terrorist organizations, such as Lebanon-

based Hezbollah, through the smuggling of cigarettes. These groups purchase cigarettes in States with low taxes and then transport them into states with higher taxes where the contraband is sold to small retailers at below market costs. The September 19, 2003, edition of the Detroit Free Press reports that one such scheme involved a 12-member syndicate, which purchased cigarettes in North Carolina and resold them in Michigan. Because North Carolina collects a 50-cent-per-carton tax and Michigan collects a \$12.50 per carton tax, federal prosecutors estimated that one member of the scheme, Hassan Moussa Makki, who monthly smuggled \$36,000 to \$72,000 worth of cigarettes into the State during a 2-year-period, prevented Michigan from collecting \$2 million in tax revenue. Law enforcement authorities determined Makki donated a substantial portion of these profits to Hezbollah. By providing state attorneys general with the necessary enforcement tools and the Bureau of Alcohol, Tobacco, Firearms and Explosives with investigative and inspection authority, the PACT Act will ultimately disrupt this form of terrorist funding and ensure that state, local and tribal governments collect their rightful excise taxes from both cigarette and smokeless tobacco sales.

With respect to delivery sales of smokeless tobacco, this provision is intended to impose strict federal limitations on delivery sales in order to supplement, and not preempt, applicable State or local law. Accordingly, it is intended that State-specific requirements in connection with the collection and remittance of applicable smokeless tobacco excise taxes will remain controlling, notwithstanding that advance payment of excise taxes might otherwise be required by Federal law in the absence of contrary State law. Moreover, the Federal proscription of delivery sales of smokeless tobacco with respect to which excise taxes have not been paid in advance of the delivery is not intended to apply where the laws or administrative practices of the State and locality in which the delivery is made provide that the delivery seller may remit applicable smokeless tobacco excise taxes in an alternate manner.

For example, the law of the delivery State and locality may explicitly or implicitly provide for the payment of smokeless tobacco excise taxes along with the filing of a tax return in the month subsequent to the delivery sale. Under such circumstances, even though applicable State or local law may not require the applicable smokeless tobacco excise taxes be remitted after the delivery, where the law of the delivery State and locality allows for such taxes to be remitted after the delivery, the intent of this provision is that the delivery sale may be made without violating federal law provided that applicable State and local law with respect to the collection and/or

remittance of applicable smokeless tobacco excise taxes are satisfied.

I call upon my colleagues to support Senator KOHL's and my efforts to prevent the funding of global terrorist organizations and ensure the collection of all excise taxes from the sale of cigarettes and smokeless tobacco, including Internet sales, so States can utilize their rightful revenue.

#### THE MAMMOGRAPHY QUALITY STANDARDS ACT

Mr. KENNEDY. Madam President, I strongly support this important legislation. Women screened for breast cancer deserve mammograms of the highest possible quality. I commend Senator MIKULSKI and Senator ENSIGN for this bipartisan proposal to strengthen current standards and do more to reduce the tragic toll of breast cancer.

Breast cancer is the second leading cause of cancer death among women, exceeded only by lung cancer. It strikes more than 200,000 Americans a year. Over 39,000 will die from breast cancer this year.

Early screening is essential. More than 90 percent of breast cancers are now detected at an early stage of the disease, when treatment can be most effective. Because of early detection through regular mammograms, the death rate from breast cancer fell by 20 percent between 1990 and 2000, even though the overall incidence increased slightly.

All women deserve access to mammograms of the highest quality. It's a tragedy when tumors are missed and lives lost because a screening was conducted poorly or interpreted inadequately. The legislation that Senator MIKULSKI and Senator ENSIGN have proposed will improve the quality of mammograms and help reduce the unacceptable toll of breast cancer and I urge my colleagues to approve it. It is fitting that this important bill is one of the first actions taken by the Senate in this new session. It deserves to become law as soon as possible.

#### LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Madam President, I rise to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

In May 2002, two young male assailants targeted a Washington, D.C. resident after he left a local gay bar. The victim suffered severe face wounds, including a broken nose. Later that night, and in the week that followed, several more gay men were attacked by an unidentified group of young men.

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. By passing this legislation and changing current law, we can change hearts and minds as well.

#### MEDICARE PRESCRIPTION DRUG PRICE REDUCTION ACT

Mrs. FEINSTEIN. Madam President, I rise today to cosponsor S. 1999, the Medicare Prescription Drug Price Reduction Act, which strikes language known as the "noninterference clause" included in the recently passed conference report accompanying the Medicare Prescription Drug and Modernization Act of 2003.

I believe that language preventing the Secretary from leveraging the enormous purchasing power of the Federal Government will mean our seniors may pay more for their drugs than they could be if that language was modified to allow the Secretary negotiating ability. America's seniors already pay the highest drug prices in the world, even though American taxpayers subsidize the research that produces many of those drugs.

So this legislation gives the Secretary of the Department of Health and Human Services, HHS, authority to negotiate contracts with manufacturers of covered Medicare Part D prescription drugs in order to ensure that enrollees in Medicare prescription drug plans, PDPs, pay the lowest possible price. The authority given to the HHS Secretary is similar to that given to other Federal entities that purchase prescription drugs in bulk.

I voted for the Medicare prescription drug conference report because it delivered voluntary prescription drug coverage to this Nation's 41 million Medicare beneficiaries. Too many Americans today face the terrible choice of paying for rent or groceries or paying for their prescription drugs. In fact, some of my constituents have resorted to skipping doses in an attempt to manage prescription drug prices.

One of the strongest features of the Medicare bill is the assistance it provides for low-income Medicare recipients through the elimination or reduction of premiums, deductibles and copays. For those low-income Medicare recipients whose prescription drug spending exceeds the catastrophic limit, or \$5,100 in total drug spending, Medicare will pay all of their drug costs. For seniors who do not qualify for the low-income assistance, they will pay no more than 5 percent of their prescription drug costs above the catastrophic limit.

The Medicare prescription drug bill includes essential increases in funding for California's health care providers. California's hospitals are facing financial crises across the State. In fact, over the past 7 years, more than 62 hospitals have been forced to close.

The bill will help hospitals meet the needs of California's communities by providing \$882 million in additional

Medicare and Medicaid payments over the next 10 years. Physicians will now receive an increase of 1.5 percent per year in Medicare payments in 2004 and 2005, rather than the 4.5 percent payment cut they were expected to incur.

However, one of the most troubling aspects of the bill was language intended to promote competition among prescription drug plans in order to lower prescription drug prices. Section 1860D-11(i) says:

The Secretary may not interfere with the negotiations between drug manufacturers and pharmacies and Prescription Drug sponsors.

I believe that this language actually takes away one of the best tools the Medicare program could use to bring down prescription drug prices by denying the Government the ability to negotiate price discounts on behalf of Medicare recipients.

The Veterans' Affairs, VA, system negotiates prescription drug prices. This negotiating authority has been a terrific success in bringing down the cost of drugs purchased by the VA. Why would we prevent the Secretary of HHS from doing the same on behalf of our 41 million Medicare recipients?

Some argue that this noninterference language will spur competing prescription drug plans to drive down the cost of prescription drugs in an effort to secure contracts with the Federal Government. However, since the Secretary may not require a particular formulary or institute a price structure for covered Part D drugs, seniors may be unprotected from escalating drug costs in regions without plan competition.

Here is the most recent picture of health care spending in the United States: Health care spending in the United States increased 9.3 percent to \$1.55 trillion in 2002, the largest increase in 11 years. It now accounts for 15 percent of the Nation's gross domestic product. Prescription drug spending rose 15.3 percent to \$162.4 billion in 2002, accounting for 16 percent of the overall health care spending increase.

Spending on prescription drugs is often cited as a key contributor to rising health care costs. Unfortunately, the Medicare bill missed a significant opportunity to reign in the escalating cost of prescription drugs in the U.S.

I believe the Medicare Prescription Drug Price Reduction Act will bring real prescription drug cost relief to seniors in California and across the country.

I urge my colleagues to join me in supporting this important legislation.

#### THE UNINSURED

Mr. SMITH. Madam President, I rise today on behalf of the almost 44 million Americans who have no health insurance. This number has continued to grow—last year alone, the number of people who lost their insurance grew more than any other year in the past decade. The number of uninsured Americans now exceeds the cumulative

population of 24 states and the District of Columbia.

I know we can reverse this trend because we have done it in the past. During my first year in the U.S. Senate, I helped create the State Children's Health Insurance Program (CHIP). Today, all 50 States have SCHIP programs covering millions of needy children who do not qualify for Medicaid.

Last night in his State of the Union address, President Bush highlighted the need to make insurance more affordable for working Americans. I couldn't agree more. He also asked Congress to give lower-income Americans a refundable tax credit to allow millions to buy basic health coverage.

Last year, the President's ten-year refundable tax credit proposal to cover the uninsured would have helped up to 14 million people with increased access to care: 6 million previously uninsured Americans could gain health care insured and 8 million could improve their coverage.

This would be a great start. But we must act, and we must act now, before health insurance coverage erodes even further. Last year, Congress set aside \$50 billion to cover the uninsured—less than in previous years—and once again, Congress failed to act.

Helping provide health care for working families and children is not a partisan issue.

Having access to health insurance is the best predictor of access to health care. Without access to preventive care, millions of people suffer needlessly every year, and often require more expensive, less effective emergency care.

But suffering is only part of the equation. Eighteen thousand Americans die every year for lack of access to health care. That translates to two people dying every hour because they were uninsured.

I ask my colleagues to come together to help solve this problem that has affected so many of our friends and neighbors. I ask my colleagues to make it a priority to preserve and expand access to health care coverage in the United States, and I ask that we do it before the end of this Congress.

It is the right thing to do, and the right time to do it. Thank you, Mr. President, I yield the floor.

#### BIOMETRICS—THE TECHNOLOGICAL ADVANCEMENT IN ANIMAL IDENTIFICATION

Mr. ALLARD. Madam President, it has been brought to my attention that the Department of Agriculture has put for comment their rules and regulations on animal identification, in particular beef. It is not unusual that by the time Federal agencies in today's environment get around to issuing their rules and regulations, or by the time Congress passes legislation, our technology has moved so quickly that those provisions become outdated. I am concerned this could be happening with

the Department of Agriculture promulgating rules on the radio frequency identification, RFID, tag in United States animal identification. It has an internal code structure that identifies a specific bovine, but if something happens to the tag, there is no way of re-establishing the animal's identification. That is, there is no way of re-establishing the animal's identification unless another form of permanent identification is obtained. That is why it is so important to discuss the use of biometrics in animal verification, and more specifically, to fully explore the use of retinal scanning for identification purposes.

It is my understanding that the rules and regulations may exclude the use of retinal scanning because the rules that the USDA is considering do not address or allow the use of a "secure permanent identifier," or at the least, they could be interpreted to discourage its use. I have personally viewed such retinal scanning technology and believe that it can be a practical way to identify individual animals, or lots of animals, and that this technology should not be put at a disadvantage because of a policy position by the Department of Agriculture.

With the December 23 discovery of a cow infected with bovine spongiform encephalopathy, BSE, the United States faced a real-life test of our animal identification and tracking system. Identification of livestock is very advanced in the United States, but even with our system, it took days to track that BSE-infected cow to Canada.

As part of our efforts to confront, control and eliminate the risk of BSE and to address future animal health emergencies, we should consider putting into place systems that can easily and rapidly identify an animal and tell us where it has been. It must be able to tell us what animals it has been in contact with and where those contacts are now. The system should do this rapidly, securely and without error.

I commend the efforts of the USDA and industry who have been working together for some time to design a national animal identification plan. During the intervening period, new technologies have continued to emerge. As the USDA looks at implementing a national animal identification plan, it is important that we utilize the best of today's technologies. For instance, a primary objective of this plan, as proposed, is to trace any animal within 48 hours. With the technology available to us in this country, we can be looking at systems that can locate animals in minutes—not hours—with great accuracy.

To assure the American public and our export customers that we have not lost track of any animals, the U.S. animal identification plan should allow use of a secure, tamper-resistant image of the animal's retinal vascular pattern that is more unique than a human fingerprint. Retinal scanning identifies

the animal, not the identifier. The majority of the other animal identification systems work on the basis of adding an identifier to the animal, such as a visual or electronic marker or tag and then recording that identifier. Identifiers like this can be lost or changed and are not secure. Some estimates put livestock tag loss in the range of 5 to 8 percent—an unacceptable scenario when considering the ramifications that this could mean to the beef industry.

I hope that the national animal identification plan does not preclude the use of new technologies introduced since the plan's inception, especially when these technologies exceed the proposed plan's performance objectives. Several U.S. companies are not waiting for the USDA, but are rapidly installing retinal imaging technology in their own plans to significantly improve their ability to track livestock. These companies should not be forced to also adopt a poorer performing technology because the plan mandates a certain, specific technology.

It is critical that the plan's systems be audited for performance and reliability to verify that they are actually working. We must be able to measure and document how many animals are misidentified or lost. Since retinal scanning technology uses secure, tamper-resistant, retinal patterns, it is currently the only available method against which to verify the performance of any tag-based system.

We should be using the most current technology available—the Global Positioning System, GPS. By linking the Global Positioning System to a secure identifier such as a retinal scan, the time, date, and location of the animal can be captured when the eye is scanned, proving beyond a doubt that "this animal was at this place at this time." Furthermore, the use of GPS coordinates provides USDA with the means to audit and verify the accuracy of any identification numbering system.

The United States has the most competitive livestock sector in the world. But we are at risk of falling behind countries in Europe, South America, as well as Australia and New Zealand, nations that are all exploring more modern technologies for identifying and tracking livestock. Not only can the U.S. take a leadership role in this area, we can take identification and traceability "off the table" as a possible trade barrier by introducing technologies that leapfrog existing country requirements.

I would like to close by reminding my colleagues that it is only when you combine identity with location that you get traceability. And in order to build a secure, tamper-resistant system to trace livestock, you must begin with a secure, tamper-resistant identifier. I believe we have the technology to do this in a practical, economically feasible way that will allow United States producers to meet the concerns expressed by our trading partners when

managing diseases like mad cow disease. I believe retinal scanning combined with the GPS system can be the most practical option if the policy of this country is to require an identification system of each animal or even for tracing batches of live animals because it is technology that can be easily used in the field and is very accurate, reliable, and precise.

#### RECOGNIZING MISHAWAKA POLICE OFFICERS

Mr. LUGAR. Madam President, I rise to share with the Senate the efforts of Corporal Thomas Roberts and Patrolman Bryan Verkler, of the Mishawaka Police Department, Mishawaka, IN, who gave their lives in the line of duty on December 13, 2003.

Corporal Roberts was a 14-year veteran of the force. Patrolman Verkler had completed nearly 2½ years of service. Both men are survived by their families.

At this difficult time, my thoughts and prayers are with these men and their families.

#### RECOGNITION OF MICHAEL MANGANIELLO'S SERVICE TO COALITION FOR THE ADVANCEMENT OF MEDICAL RESEARCH

Mr. KENNEDY. Madam President, I welcome this opportunity to pay tribute to the impressive work of Michael Manganiello of the Coalition for the Advancement of Medical Research, who is working skillfully on behalf of patients across America to turn the promise of medical research into the reality of new cures and better treatments. As the president of the Coalition for the Advancement of Medical Research for the past 2 years and Vice President of the Christopher Reeve Paralysis Foundation, he has provided extraordinary leadership to community advocates for medical research. As the leader of an effective coalition to prevent restrictions on stem cell research, he is working to enable future generations to benefit from scientific advances that can barely be imagined.

Mr. Manganiello is effectively teaching both Congress and the public about the complex topic and the immense potential of stem cell research. His outreach to local communities has raised awareness for these issues to those it will help the most, millions of men, women and children in families across the country who bear the burden of debilitating diseases. He works diligently with the scientific and policy communities to realize the full benefits of current research and expand our ability to pursue promising new lines of research. His skill in working toward consensus has benefited us all.

Through his many contributions to the advancement of medical research, Michael Manganiello has made a daily difference in our nation's well-being that will become more and more obvious in the years to come. I commend

him for his outstanding public service to our country.

#### SMALL STATE HOME PROGRAM EQUITY ACT

Mr. DORGAN. Madam President, I rise to support legislation that Senator MURKOWSKI introduced last November that would bring some fairness to States such as North Dakota and Alaska with low populations. I am proud to cosponsor S. 1851, the Small State HOME Program Equity Act.

This legislation would increase the minimum funding level provided to low-population States for the U.S. Department of Housing and Urban Development's HOME Investment Partnerships Program. The HOME Investment Partnership Program distributes funds to State and local governments to expand housing for low-income families. It is one of the most important tools that States, local governments, and nonprofits have to respond to affordable housing needs. The program helps both renters and homebuyers across the country by rehabilitating substandard housing and funding new construction.

The HOME Investment Partnership Program has been enormously successful in providing housing for those in need, and I have been a strong supporter of annual appropriations for this important program. For the last several years, I have joined many of my colleagues in sending a letter to Senators BOND and MIKULSKI, the chairman and ranking member of the VA-HUD and Independent Agencies Appropriations Subcommittee, supporting robust funding for the HOME program.

Since 1992, the first year in which funds were appropriated for this program, HOME funds have been dispersed by a statutory formula, which is based in part on a State's population. At the time the program was created, a minimum funding level of \$3 million was established for States which would receive a small amount of HOME funds under the allocation formula.

Over the last 10 years, inflation has significantly eroded the value of this minimum allocation and it is very difficult for States to meet their housing needs on only the minimum allocation of HOME funds. In Grand Forks County in North Dakota, for example, the wait list for HOME rehabilitation funding is estimated to be 11 years. I would imagine that the situation is similar in the 10 States that are not currently receiving a level of funding that allows them to run effective programs with their HOME dollars.

This is unacceptable. States with low populations deserve to have adequate funding to meet the unique housing needs of rural areas where construction and rehabilitation costs are often very high. The congressionally appointed, bipartisan Millennium Housing Commission also recognized this problem. It recommended increasing the minimum State funding level for the

HOME program to \$5 million in their May 30, 2002, report to Congress.

I look forward to working with Senator MURKOWSKI on this important legislation to meet the housing needs of low-income families in rural America.

#### ADDITIONAL STATEMENTS

##### TRIBUTE TO MARSHA GOODWIN-BECK

• Mr. GRAHAM of Florida. Madam President, I am saddened to report that on December 18, 2003, our Nation lost one of its leading advocates for the care of older veterans, Marsha Goodwin-Beck. The Director of Geriatrics for the Veterans Health Administration from 1989 until her death, she dedicated her career to serving veterans in many capacities.

Ms. Goodwin-Beck was instrumental in the growth and development of VA's nationally prominent Geriatric Research, Education and Clinical Centers, as well as its multidisciplinary geriatric training programs. She also had a key role in coordinating the implementation of the Veterans Millennium Health Act of 1999, a bill that made an impact on a countless number of our Nation's veterans. Ms. Goodwin-Beck began her career at VA in 1983 as an education specialist, later moving into various positions with the Office of Geriatrics and Extended Care. In 2003, VA recognized her long-time service on behalf of older veterans by awarding her the VA Undersecretary for Health Commendation.

As a testament to her expertise, Ms. Goodwin-Beck authored several articles on geriatric and long-term care issues. She also was active in local and national nursing organizations, including as a founding member of the National Alliance for Caregiving, and she served on the Education Committee of the Gerontological Society of America. Shortly before her death, Ms. Goodwin-Beck was elected to the national board of directors of the American Geriatrics Society.

Prior to her Government service, Ms. Goodwin-Beck had a distinguished career in clinical care as a certified adult nurse practitioner and nurse educator. Between 1981 and 1982, she was awarded a Robert Wood Johnson Foundation fellowship as a primary care nurse practitioner at the University of Maryland. Ms. Goodwin-Beck was also an assistant professor at Catholic University's School of Nursing and was on faculty for the university's Teaching Nursing Home project. In addition, she was a consultant to the American Health Care Association, coauthored the book "How to Be a Nursing Aide in a Nursing Home," and conducted workshops on quality assurance for staff in nursing homes throughout the country.

On behalf of the members and staff of the Senate Committee on Veterans Affairs, our hearts and thoughts are with Ms. Goodwin-Beck's husband, Jeffrey

Beck, and her entire family. VA has lost one of its most dedicated and caring members, but I know that Ms. Goodwin-Beck's contributions to veterans' care will continue to be felt for years to come.●

#### IN MEMORY OF CHARLES T. BIGGS

● Mr. LUGAR. Madam President, I rise today to commemorate a constituent of mine, Charles T. Biggs, from Hope, IN, who passed away on December 2, 2003.

Mr. Biggs, known as "Charlie" to his numerous friends and colleagues, was an invaluable asset to the State of Indiana, and will be sorely missed in each community he worked so diligently to improve. Charlie taught at Hauser High School for many years as a music instructor, and a band and choir director. He also owned and published a local newspaper, the Hope Star-Journal. In addition, he was a member of the Hoosier State Press Association and a past president of the Indiana Democratic Editorial Association.

Charlie selflessly offered his remaining time to numerous organizations. He served on the Hope Volunteer Fire Department as an EMT, was a board member of the Heritage of Hope Foundation, was a member of the St. Bartholomew Catholic Church, and even served for over 30 years as the organist for the Hope United Methodist Church.

He is survived by his wife, Carol, four children, and seven granddaughters. My thoughts and prayers are with his family, friends, and colleagues during this difficult time.●

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations, a withdrawal and a treaty which were referred to the appropriate committees.

(The nominations received today are printed in the end of the Senate proceedings.)

#### MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 2006. A bill to extend and expand the Temporary Extended Unemployment Compensation Act of 2003, and for other purposes.

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first

and second times by unanimous consent, and referred as indicated:

By Mr. HAGEL (for himself and Mr. DASCHLE):

S. 2010. A bill to strengthen national security and United States borders, reunify families, provide willing workers, and establish earned adjustment under the immigration laws of the United States; to the Committee on the Judiciary.

By Mr. HAGEL:

S. 2011. A bill to convert certain temporary Federal district judgeships to permanent judgeships, and for other purposes; to the Committee on the Judiciary.

By Mr. LEVIN:

S. 2012. A bill for the relief of Luay Lufti Hadad; to the Committee on the Judiciary.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. DEWINE, and Mr. KOHL):

S. 2013. A bill to amend section 119 of title 17, United States Code, to extend satellite home viewer provisions; to the Committee on the Judiciary.

By Ms. CANTWELL (for herself, Mrs. CLINTON, Mr. JEFFORDS, and Mr. FEINGOLD):

S. 2014. A bill to amend the Federal Power Act to establish reliability standards; to the Committee on Energy and Natural Resources.

By Ms. CANTWELL (for herself, Mr. FEINGOLD, and Mr. JEFFORDS):

S. 2015. A bill to prohibit energy market manipulation; to the Committee on Energy and Natural Resources.

#### 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:

S. Res. 285. A resolution recognizing 2004 as the "50th Anniversary of Rock 'n' Roll"; considered and agreed to.

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 286. A resolution to authorize legal representation in United States of America v. Parvis Karim-Panahi; considered and agreed to.

By Ms. LANDRIEU (for herself and Mr. BREAU):

S. Res. 287. A resolution commending the Southern University and A&M College of Baton Rouge Jaguars for being the Sheridan Broadcasting National Black College Champions, the American Sports Wire National Black College Champions, and the MBC/BCSP National Black College Champions; considered and agreed to.

By Mr. BREAU (for himself and Ms. LANDRIEU):

S. Res. 288. A resolution commending the Louisiana State University Tigers football team for winning the 2003 Bowl Championship Series national championship game; considered and agreed to.

#### ADDITIONAL COSPONSORS—TUESDAY, JANUARY 20, 2004

S. 1891

At the request of Mr. GRAHAM of South Carolina, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1891, a bill to amend title 11, United States Code, to establish a priority for the payment of claims for duties paid to the United States by licensed Customs brokers and sureties on behalf of a debtor.

#### ADDITIONAL COSPONSORS

S. 348

At the request of Mr. SCHUMER, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 348, a bill to amend the Internal Revenue Code of 1986 to make higher education more affordable, and for other purposes.

S. 1200

At the request of Ms. CANTWELL, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1200, a bill to provide lasting protection for inventoried roadless areas within the National Forest System.

S. 1272

At the request of Mr. CORZINE, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1272, a bill to amend the Occupational Safety and Health Act of 1970 to modify the provisions relating to citations and penalties.

S. 1345

At the request of Mrs. MURRAY, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1345, a bill to extend the authorization for the ferry boat discretionary program, and for other purposes.

S. 1700

At the request of Mr. HATCH, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1700, a bill to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

S. 1733

At the request of Mr. KOHL, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1733, a bill to authorize the Attorney General to award grants to States to develop and implement State court interpreter programs.

S. 1813

At the request of Mr. LEAHY, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1813, a bill to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts in Iraq, and for other purposes.

S. 1961

At the request of Mr. HOLLINGS, the names of the Senator from New York (Mr. SCHUMER) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of S. 1961, a bill to provide for the revitalization and enhancement of the American passenger and freight rail transportation system.



S. 1998

At the request of Mr. BINGAMAN, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 1998, a bill to amend title 49, United States Code, to preserve the essential air service program.

S. 2006

At the request of Mr. KENNEDY, the names of the Senator from California (Mrs. BOXER) and the Senator from West Virginia (Mr. BYRD) were added as cosponsors of S. 2006, a bill to extend and expand the Temporary Extended Unemployment Compensation Act of 2003, and for other purposes.

S.J. RES. 19

At the request of Mr. SPECTER, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S.J. Res. 19, a joint resolution recognizing Commodore John Barry as the first flag officer of the United States Navy.

S. RES. 276

At the request of Mrs. FEINSTEIN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. Res. 276, a resolution expressing the sense of the Senate regarding fighting terror and embracing efforts to achieve Israeli-Palestinian peace.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HAGEL (for himself and Mr. DASCHLE):

S. 2010. A bill to strengthen national security and United States borders, reunify families, provide willing workers, and establish earned adjustment under the immigration laws of the United States; to the Committee on the Judiciary.

Mr. HAGEL. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2010

*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 "Immigration Reform Act of 2004: Strengthening America's National Security, Economy, and Families" or the "Immigration Reform Act of 2004".

#### TITLE I—FAMILY REUNIFICATION

#### SEC. 101. TREATMENT OF IMMEDIATE RELATIVES WITH RESPECT TO THE FAMILY IMMIGRATION CAP.

(a) EXEMPTION OF IMMEDIATE RELATIVES FROM FAMILY-SPONSORED IMMIGRANT CAP.—Section 201(c)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1151(c)(1)(A)) is amended by striking clauses (i), (ii), and (iii) and inserting the following:

"(i) 480,000, minus;

"(ii) the number computed under paragraph (3); plus

"(iii) the number (if any) computed under paragraph (2)."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended—

(1) by striking paragraph (2); and

(2) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.

#### SEC. 102. RECLASSIFICATION OF SPOUSES AND MINOR CHILDREN OF LEGAL PERMANENT RESIDENTS AS IMMEDIATE RELATIVES.

(a) IMMEDIATE RELATIVES.—Section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) is amended—

(1) in the first sentence, by inserting "or the spouses and children of aliens lawfully admitted for permanent residence," after "United States,";

(2) in the second sentence—

(A) by inserting "or lawful permanent resident" after "citizen" each place that term appears; and

(B) by inserting "or lawful permanent resident's" after "citizen's" each place that term appears;

(3) in the third sentence, by inserting "or the lawful permanent resident loses lawful permanent resident status" after "United States citizenship"; and

(4) by adding at the end the following: "A spouse or child, as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join the spouse or parent. The same treatment shall apply to parents of citizens of the United States being entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join their daughter or son."

(b) ALLOCATION OF IMMIGRANT VISAS.—Section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)) is amended—

(1) in paragraph (1), by striking "23,400" and inserting "38,000";

(2) by striking paragraph (2) and inserting the following:

"(2) UNMARRIED SONS AND UNMARRIED DAUGHTERS OF PERMANENT RESIDENT ALIENS.—Qualified immigrants who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence shall be allocated visas in a number not to exceed 60,000 plus the number (if any) by which such worldwide level exceeds 226,000, plus any visas not required for the class specified in paragraph (1).";

(3) in paragraph (3), by striking "23,400" and inserting "38,000"; and

(4) in paragraph (4), by striking "65,000" and inserting "90,000".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) RULES FOR DETERMINING WHETHER CERTAIN ALIENS ARE IMMEDIATE RELATIVES.—Section 201(f) of the Immigration and Nationality Act (8 U.S.C. 1151(f)) is amended—

(A) in paragraph (1), by striking "paragraphs (2) and (3)," and inserting "paragraph (2).";

(B) by striking paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2).

(2) NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE.—Section 202 of the Immigration and Nationality Act (8 U.S.C. 1152) is amended—

(A) in subsection (a)(4)—

(i) by striking subparagraphs (A) and (B);

(ii) by redesignating subparagraphs (C) and (D) as subparagraphs (A) and (B) respectively; and

(iii) in subparagraph (A), as so redesignated, by striking "section 203(a)(2)(B)" and inserting "section 203(a)(2)"; and

(B) in subsection (e), in the flush matter following paragraph (3), by striking "or as

limiting the number of visas that may be issued under section 203(a)(2)(A) pursuant to subsection (a)(4)(A)".

(3) ALLOCATION OF IMMIGRATION VISAS.—Section 203(h) of the Immigration and Nationality Act (8 U.S.C. 1153(h)) is amended—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking "subsections (a)(2)(A) and (d)" and inserting "subsection (d)";

(ii) in subparagraph (A), by striking "becomes available for such alien (or, in the case of subsection (d), the date on which an immigrant visa number became available for the alien's parent)," and inserting "became available for the alien's parent,"; and

(iii) in subparagraph (B), by striking "applicable";

(B) in paragraph (2), by striking "The petition" and all that follows through the period and inserting "The petition described in this paragraph is a petition filed under section 204 for classification of the alien's parent under subsection (a), (b), or (c)."; and

(C) in paragraph (3), by striking "subsections (a)(2)(A) and (d)" and inserting "subsection (d)".

(4) PROCEDURE FOR GRANTING IMMIGRANT STATUS.—Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended—

(A) in subsection (a)(1)—

(i) in subparagraph (A)—

(I) in clause (iii)—

(aa) by inserting "or legal permanent resident" after "citizen" each place that term appears; and

(bb) in subclause (II)(aa)(CC)(bbb), by inserting "or legal permanent resident" after "citizenship";

(II) in clause (iv)—

(aa) by inserting "or legal permanent resident" after "citizen" each place that term appears; and

(bb) by inserting "or legal permanent resident" after "citizenship";

(III) in clause (v)(I), by inserting "or legal permanent resident"; and

(IV) in clause (vi)—

(aa) by inserting "or legal permanent resident status" after "renunciation of citizenship"; and

(bb) by inserting "or legal permanent resident" after "abuser's citizenship";

(ii) by striking subparagraph (B);

(iii) by redesignating subparagraphs (C) through (J) as subparagraphs (B) through (I), respectively;

(iv) in subparagraph (B), as so redesignated, by striking "subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii)" and inserting "clause (iii) or (iv) of subparagraph (A)"; and

(v) in subparagraph (I), as so redesignated—

(I) by striking "or clause (ii) or (iii) of subparagraph (B)"; and

(II) by striking "under subparagraphs (C) and (D)" and inserting "under subparagraphs (B) and (C)";

(B) by striking subsection (a)(2);

(C) in subsection (h), by striking "or a petition filed under subsection (a)(1)(B)(ii)"; and

(D) in subsection (j), by striking "subsection (a)(1)(D)" and inserting "subsection (a)(1)(C)".

#### SEC. 103. EXCEPTIONS.

Section 212(a)(9)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)(iii)) is amended by adding at the end the following:

"(V) SPOUSES AND CHILDREN OF LEGAL PERMANENT RESIDENTS OR CITIZENS OF THE UNITED STATES AND PARENTS OF UNITED STATES CITIZENS.—The provisions of this subparagraph or subparagraph (C)(i)(I) shall be waived for spouses and children of legal permanent residents or citizens of the United States as well

as parents of citizens of the United States, as such terms are defined in section 201(b)(2)(A)(i), on whose behalf or who are derivative beneficiaries of a petition filed under section 203 on or before the date of introduction of the Immigration Reform Act of 2004.”.

## TITLE II—WILLING WORKER PROGRAM

### SEC. 201. WILLING WORKERS.

(a) H-2B WORKERS.—Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) is amended—

(1) by inserting “subject to section 212(t),” before “having a residence”; and

(2) by striking “temporary service or labor” and inserting “short-term service or labor, lasting not more than 9 months”.

(b) H-2C WORKERS.—Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) is amended by striking “profession; or” and inserting “profession, or (c) subject to section 212(t), who is coming temporarily to the United States to perform labor or services, other than those occupation classifications covered under the provisions of clause (i)(b), (ii)(a), or (ii)(b) of this subparagraph or subparagraph (L), (O), or (P), for a United States employer, if United States workers qualified to perform such labor or service cannot be identified; or”.

### SEC. 202. RECRUITMENT OF UNITED STATES WORKERS.

Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended—

(1) by redesignating subsection (p), as added by section 1505(f) of Public Law 106-386 (114 Stat. 1526) as subsection (s); and

(2) by adding at the end the following:

“(t)(1) An employer that seeks to employ an alien described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) shall, with respect to an alien described in such clause (ii)(b), 14 days prior to filing an application under paragraph (3), and with respect to an alien described in such clause (ii)(c), 30 days prior to filing an application under paragraph (3), take the following steps to recruit United States workers for the position for which the nonimmigrant worker is sought:

“(A) Submit a copy of the job opportunity, including a description of the wages and other terms and conditions of employment, to the United States Employment Services within the Department of Labor (ES) which shall provide the employers with an acknowledgement of receipt of the documentation provided to the ES in accordance with this subparagraph.

“(B) Authorize the ES to post the job opportunity on ‘America’s Job Bank’ and local job banks, and with unemployment agencies and other labor referral and recruitment sources pertinent to the job in question.

“(C) Authorize the ES to notify the central office of the State Federation of Labor in the State in which the job is located.

“(D) Post the availability of the job opportunity for which the employer is seeking a worker in conspicuous locations at the place of employment for all employees to see.

“(E) Advertise, with respect to an alien described in such clause (ii)(b), for at least 3 consecutive days, and for an alien described in such clause (ii)(c), for at least 10 consecutive days, the availability of the job opportunity for which the employer is seeking a worker in a publication with the highest circulation in the labor market that is likely to be patronized by a potential worker.

“(F) Based on recommendations by the local job service, advertise the availability of the job opportunity in professional, trade, or ethnic publications that are likely to be patronized by a potential worker.

“(2) An employer that seeks to employ an alien described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) shall—

“(A) has offered the job to any United States worker who applies and is qualified for the job for which the nonimmigrant worker is sought and who is available at the time of need; and

“(B) be required to maintain, for at least 1 year after the employment relationship is terminated, documentation of recruitment efforts and responses received prior to the filing of the employer’s application with the Secretary of Labor, including resumes, applications, and if applicable, tests of United States workers who applied and were not hired for the job the employer seeks to fill with a nonimmigrant worker.”.

### SEC. 203. ADMISSION OF WILLING WORKERS.

(a) APPLICATION TO THE SECRETARY OF LABOR.—Section 212(t) of the Immigration and Nationality Act (8 U.S.C. 1182(t)), as added by section 202, is amended by adding after paragraph (2) the following:

“(3) An employer that seeks to fill a position with an alien described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H), shall file with the Secretary of Labor an application attesting that—

“(A) the employer is offering and will offer during the period of authorized employment to aliens admitted or provided status as a nonimmigrant described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H), wages that are at least—

“(i) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

“(ii) the prevailing wage level for the occupational classification in the area of employment;

whichever is greater, based on the best information available at the time of the filing of the application, and for purposes of clause (ii) the prevailing wage level shall be, if the job opportunity is covered by a collective bargaining agreement between a union and the employer, the wage rate set forth in the collective bargaining agreement, or if the job opportunity is not covered by a collective bargaining agreement between a union and the employer, and it is in an occupation that is covered by a wage determination under the Davis-Bacon Act (40 U.S.C. 276a et seq.) or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the appropriate statutory wage determination;

“(B) the employer will offer the same wages, benefits, and working conditions for such nonimmigrant as those provided to United States workers similarly employed in the same occupation and the same place of employment;

“(C) there is not a strike, lockout, or labor dispute in the occupational classification at the place of employment (including any concerted activity to which section 7 of the Labor Management Relations Act (29 U.S.C. 157) applies);

“(D) the employer will abide by all applicable laws and regulations relating to the right of workers to join or organize a union;

“(E) the employer has provided notice of the filing of the application to the bargaining representative, if any, of the employer’s employees in the occupational classification at the place of employment or, if there is no such bargaining representative, has posted notice of the filing in conspicuous locations at the place of employment for all employees to see for not less than 10 business days for an alien described in clause (ii)(b) of section 101(a)(15)(H) and for not less than 25 business days for an alien described in clause (ii)(c) of such section;

“(F) the employer (including its officers, representatives, agents, or attorneys) has

not required the applicant to pay any fee or charge for preparing the application and submitting it to the Secretary of Labor, the Secretary of Homeland Security, or the Secretary of State;

“(G) the requirements for the job opportunity represent the employer’s actual minimum requirements for that job and the employer will not hire nonimmigrant workers with less training or experience;

“(H) the employer, within the 60 days prior to the filing of the application and the 60 days following the filing, has not laid-off, and will not lay-off, any United States worker employed by the employer in any similar position at the place of employment;

“(I) the employer, prior to the filing of the application, has complied with the recruitment requirements in accordance with paragraph (1); and

“(J) no job offer may impose on United States workers any restrictions or obligations that will not be imposed by an employer on a nonimmigrant worker described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H).”.

(b) ACCOMPANIED BY JOB OFFER.—Section 212(t) of the Immigration and Nationality Act (8 U.S.C. 1182(t)), as amended by subsection (a), is further amended by adding after paragraph (3) the following:

“(4) Each application filed under paragraph (3) shall be accompanied by—

“(A) a copy of the job offer describing the wages and other terms and conditions of employment;

“(B) a statement of the minimum education, training, experience, and requirements for the job opportunity in question;

“(C) copies of the documentation submitted to the United States Employment Services within the Department of Labor (ES) to recruit United States workers in accordance with paragraph (1);

“(D) copies of the advertisements to recruit United States workers placed in publications in accordance with paragraph (1); and

“(E) a copy of the acknowledgement of receipt provided to the employer by the ES in accordance with paragraph (1)(A).”.

(c) INCOMPLETE APPLICATIONS; RETENTION OF APPLICATION; FILING OF PETITION.—Section 212(t) of the Immigration and Nationality Act (8 U.S.C. 1182(t)), as amended by subsection (b), is further amended by adding after paragraph (4) the following:

“(5) The Secretary of Labor shall review the application and requisite documents filed in accordance with paragraphs (3) and (4) for completeness and accuracy and if deficiencies are found, the Secretary of Labor shall notify the employer and provide the employer with an opportunity to address such deficiencies.

“(6) A copy of the application and requisite documents filed with the Secretary of Labor in accordance with paragraphs (3) and (4) shall be retained by the employer in a public access file at the employer’s headquarters or principal place of employment of the alien for the duration of the employment relationship and for 1 year after the termination of that employment relationship.

“(7) Upon the approval of an application by the Secretary of Labor, an employer who seeks to employ an alien described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) shall file a petition as required under section 214(c)(1) with the Bureau of Citizenship and Immigration Services within the Department of Homeland Security.

“(8) Upon finalization of the visa processing, the Secretary of Homeland Security shall issue each alien who obtains legal status under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) with a counterfeit-resistant visa and a document of authorization, both of

which meet all the requirements established by the Secretary of Homeland Security for travel documents and reflects the benefits and status set forth in this subsection.”.

#### SEC. 204. WORKER PROTECTIONS.

Section 212(t) of the Immigration and Nationality Act (8 U.S.C. 1182(t)), as amended by section 203, is further amended by adding after paragraph (7) the following:

“(8)(A) Nothing in this subsection shall be construed to limit the rights of an employee under a collective bargaining agreement or other employment contract.

“(B) An alien admitted or otherwise provided status under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) shall not be denied any right or any remedy under Federal, State, or local labor or employment law that is applicable to a United States worker employed in a similar position with the employer because of the status of the alien as a nonimmigrant worker.

“(C) It shall be unlawful for an employer who has filed a petition for a nonimmigrant worker described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner, discriminate against an employee (including a former employee) because the employee—

“(i) disclosed information, to the employer or to any other person, that the employee reasonably believes evidences a violation of this subsection or any rule or regulation pertaining to this subsection; or

“(ii) because the employee cooperates or seeks to cooperate in a government investigation or other proceeding concerning the employer’s compliance with the requirements of this subsection or any rule or regulation pertaining to this subsection.

“(D) The Secretary of Labor and the Secretary of Homeland Security shall establish a process under which a nonimmigrant worker described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) who files a complaint regarding a violation of this subsection, or any other rule or regulation pertaining to this subsection and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for that nonimmigrant classification.

“(E)(i) The Secretary of Labor and the Special Counsel of the Office of Special Counsel for Immigration-Related Unfair Employment Practices within the Department of Justice (referred to in this paragraph as the ‘Special Counsel’) shall jointly prescribe a process for the receipt, investigation, and disposition of complaints respecting a petitioner’s failure to meet a condition specified in the application submitted under paragraph (3), or a petitioner’s misrepresentation of a material fact in an application submitted under paragraph (3). The Secretary of Labor and the Special Counsel shall provide for coordinated enforcement that ensures that the investigation and hearing process for a complaint under this subparagraph is the same whether conducted by the Secretary of Labor or the Special Counsel.

“(ii) A complaint may be filed under this subparagraph with either the Secretary of Labor or the Special Counsel by an aggrieved person or organization (including bargaining representatives). The complaint shall be in writing under oath and penalty of perjury, and shall contain such information and be in such form as the Secretary of Labor or the Special Counsel requires. No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date on which the failure or misrepresentation became known

or should have become known by the complainant. The Secretary of Labor and the Special Counsel shall jointly conduct an investigation under this clause if there is reasonable basis to believe that such a failure or misrepresentation has occurred.

“(iii) The process established under clause (i) shall provide that, not later than 30 days after a complaint is filed, a determination of whether or not a reasonable basis exists to find a violation shall be made.

“(iv) If the Secretary of Labor or the Special Counsel, after receiving a complaint under this subparagraph, determines after an investigation that a reasonable basis exists under clause (iii), the Secretary of Labor or the Special Counsel, as the case may be, may require the parties to submit the issues to conciliation pursuant to a process jointly prescribed by the Secretary of Labor and the Special Counsel. Such process shall remain confidential and may not be made public by the Secretary of Labor, the Special Counsel, their officers or employees, or either of the parties or their representatives. The conciliation period shall be 60 days. If there is a determination that there is a reasonable likelihood that the complaint may be resolved through conciliation, the conciliation process may be extended up to 2 additional periods of 30 days each.

“(v) If the complaint is not resolved through conciliation, then not later than 30 days after a determination is made, the Secretary of Labor or the Special Counsel, as the case may be, shall issue a notice to the interested parties that provides an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code.

“(vi) If, on the basis of an investigation of a complaint under this subparagraph, it is determined that a reasonable basis does not exist the Secretary of Labor or the Special Counsel, as the case may be, shall issue a notice to the interested parties and offer either party an opportunity to appeal the determination of the Secretary of Labor or the Special Counsel. The appeal will provide for a hearing on the complaint, in accordance with section 556 of title 5, United States Code.

“(vii) If after receipt of a complaint in accordance with this subparagraph, no determination is issued within 30 days of whether a reasonable basis exists to find a violation, the interested or aggrieved party or their representative may request a hearing on the matter in accordance with section 556 of title 5, United States Code, by filing the request directly with the Office of the Chief Administrative Hearing Officer.

“(viii) If either party disagrees with the determination by the Secretary of Labor or the Special Counsel, they may appeal the decision to the Office of the Chief Administrative Hearing Officer, and if either party disagrees with the determination by the Office of the Chief Administrative Hearing Officer, they may appeal the decision to an administrative law judge.

“(ix) If at any stage there is a determination that there was a failure to meet a requirement of paragraph (3), or a misrepresentation of a material fact in an application—

“(I) the Secretary of Labor, Special Counsel, Office of the Chief Administrative Hearing Officer, or administrative law judge, as the case may be, shall notify the Secretary of Homeland Security of such findings, and may award such equitable relief as the party making the determination deems appropriate and impose administrative remedies, including civil monetary penalties not to exceed \$2,500 per violation; and

“(II) the Secretary of Homeland Security shall not approve petitions filed by that employer under section 214(c) for a period of at

least 1 year for aliens to be employed by the employer.

“(x) The Secretary of Homeland Security may continue to accept from an employer and approve a petition that is subject to clause (ix)(II) if the employer shows to the satisfaction of the Secretary that the act or omission giving rise to such action was in good faith and that the employer had reasonable grounds for believing that the employer’s act or omission was not a violation. A non-immigrant worker covered by the application shall remain entitled to equitable relief notwithstanding any such finding of good faith.

“(xi) If at any stage there is a determination that there was a willful failure to meet a requirement of paragraph (3), or a willful misrepresentation of a material fact in an application—

“(I) the Secretary of Labor, Special Counsel, Office of the Chief Administrative Hearing Officer, or administrative law judge, as the case may be, shall notify the Secretary of Homeland Security of such findings, and may award such equitable relief as the party making the determination deems appropriate and may impose administrative remedies, including civil monetary penalties in an amount not to exceed \$7,500 per violation; and

“(II) the Secretary of Homeland Security shall not approve petitions filed with respect to that employer under section 214(c) during a period of at least 2 years for aliens to be employed by the employer.

“(xii) If at any stage there is a determination that there was a willful failure to meet a requirement of paragraph (3), or a willful misrepresentation of material fact in an application, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 60 days before and ending 60 days after the date of filing of any visa petition supported by the application—

“(I) the Secretary of Labor, Special Counsel, Office of the Chief Administrative Hearing Officer, or administrative law judge, as the case may be, shall notify the Secretary of Homeland Security of such findings, and may award such equitable relief as the party making the determination deems appropriate and may impose administrative remedies, including civil monetary penalties in an amount not to exceed \$35,000 per violation; and

“(II) the Secretary of Homeland Security shall not approve petitions filed with respect to that employer under section 214(c) during a period of at least 3 years for aliens to be employed by the employer.

“(F) The Secretary of Labor and Special Counsel shall have the authority to initiate and pursue investigations and audits of employers, whether upon complaint or otherwise, in order to ensure that employers are not violating the rights guaranteed under this subsection to nonimmigrant workers described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H).”.

#### SEC. 205. NOTIFICATION OF EMPLOYEE RIGHTS.

Section 214(c), of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following:

“(11) An employer that employs an alien described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) shall provide such alien with the same notification of the alien’s rights and remedies under Federal, State, and local laws that the employer is required to provide to United States workers and, upon request of the United States worker, make available to United States employees a copy of the attested application submitted by the employer regarding that alien to the Secretary

of Labor and the application by the employer regarding that alien submitted to the Secretary of Homeland Security.”.

#### SEC. 206. PORTABILITY.

Section 212(t) of the Immigration and Nationality Act (8 U.S.C. 1182(t)), as amended by section 204, is further amended by adding after paragraph (8) the following:

“(9)(A) Except as provided in subparagraph (C), any alien admitted or otherwise provided status as a nonimmigrant described in section 101(a)(15)(H)(ii)(c) may change employers only after the alien has been employed by the petitioning employer for at least 3 months from the date of admission or the date such status was otherwise acquired.

“(B) Except as provided in subparagraph (C), any alien admitted or otherwise provided status as a nonimmigrant described in section 101(a)(15)(H)(ii)(b) shall be prohibited from changing employers after the alien has been employed by the petitioning employer.

“(C) The 3-month employment requirement in subparagraph (A) may be waived (without loss of status during the period of the waiver) for a nonimmigrant described in section 101(a)(15)(H)(ii)(c) and the employment requirement in subparagraph (B) may be waived (without loss of status during the period of the waiver) for a nonimmigrant described in section 101(a)(15)(H)(ii)(b) in circumstances where—

“(i) the alien began and continued the employment in good faith but the employer violated a term or condition of sponsorship of the alien under this Act or violated any other law or regulation relating to the employment of the alien; or

“(ii) the personal circumstances of the alien changed so as to require a change of employer, including family, medical, or humanitarian reasons, a disability, or other factor rendering the alien unable to perform the job.

“(D) If a waiver under subparagraph (C) is sought, the application shall be accompanied by such evidence to warrant the approval of such waiver.

“(E) A nonimmigrant alien admitted or otherwise provided status as a nonimmigrant described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) may accept new employment with a new employer upon the filing by the new employer of a new application on behalf of such alien as provided under paragraph (3). Employment authorization shall continue until the new petition is adjudicated. If the new petition is denied, the alien’s right to work as established by this subsection shall cease. The alien’s right to work, if any, established by any other provision of law, shall not be affected by the denial of such new application.”.

#### SEC. 207. SPOUSES AND CHILDREN OF WILLING WORKERS.

Section 212(t) of the Immigration and Nationality Act (8 U.S.C. 1182(t)), as amended by section 206, is further amended by adding after paragraph (9) the following:

“(10) A spouse or child of a nonimmigrant worker described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) shall be eligible for derivative status by accompanying or following to join the alien.”.

#### SEC. 208. PETITIONS BY EMPLOYER GROUPS AND UNIONS.

Section 214(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(1)) is amended—

(1) by inserting after the first sentence the following: “In the case of an alien or aliens described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H), the petition may be filed by an associated or affiliated group of employers that have multiple openings for similar employment on behalf of the individual employers or by a union or union consortium. The

petition, if approved, will be valid for employment in the described positions for the member employers, the union, or union consortium, provided the employing entity has complied with all applicable recruitment requirements and paid the requisite petition fees.”; and

(2) by adding at the end the following: “Nothing in this paragraph shall be construed to permit a recruiting entity or job shop to petition for an alien described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H).”.

#### SEC. 209. PROCESSING TIME FOR PETITIONS.

Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)), as amended by section 205, is further amended by adding at the end the following:

“(12) The Secretary of Labor shall review the application filed under section 212(t)(3) for completeness and accuracy and issue a determination with regard to the application not later than 21 days after the date on which the application was filed.

“(13) The Secretary of Homeland Security shall establish a process for reviewing and completing adjudications upon petitions filed under this subsection with respect to nonimmigrant workers described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) and derivative applications associated with these petitions, not later than 60 days after the completed petition has been filed.”.

#### SEC. 210. TERMS OF ADMISSION.

Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended by adding at the end the following:

“(8) In the case of a nonimmigrant described in section 101(a)(15)(H)(ii)(b), the initial period of authorized admission shall be for not more than 9 months from the date of application for admission in such status in any 1-year period. No nonimmigrant described in such section may be admitted for a total period that exceeds 36 months in a 4-year period.

“(9) In the case of a nonimmigrant described in section 101(a)(15)(H)(ii)(c), the initial period of authorized admission shall be for not more than 2 years. The employer may petition for extensions of such status for an additional period of not more than 2 years. No nonimmigrant described in such section shall be admitted for a total period that exceeds 4 years.

“(10)(A) The limitations contained in paragraphs (8) and (9) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(c) on whose behalf a petition has been filed under section 204(b) to accord the alien immigrant status under section 203(b), or an application for adjustment of status has been filed under section 245 to accord the alien status under section 203(b), if 365 days or more have elapsed since—

“(i) the filing of a labor certification application on behalf of the alien (if such certification is required for the alien to obtain status under section 203(b)); or

“(ii) the filing of the petition under section 204(a).

“(B) The Secretary of Homeland Security shall extend the stay of an alien who qualifies for an exemption under subparagraph (A) in 1-year increments until such time as a final decision is made—

“(i) to deny the application described in subparagraph (A)(i), or, in a case in which such application is granted, to deny a petition described in subparagraph (A)(ii) filed on behalf of the alien pursuant to such grant;

“(ii) to deny the petition described in subparagraph (A)(ii); or

“(iii) to grant or deny the alien’s application for an immigrant visa or for adjustment

of status to that of an alien lawfully admitted for permanent residence.”.

#### SEC. 211. NUMBER OF VISAS ISSUED.

Section 214(g)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(B)) is amended to read as follows:

“(B)(i) under section 101(a)(15)(H)(ii)(c) may not exceed 250,000 in each of the 5 fiscal years following the fiscal year in which the final regulations implementing the amendments made by title II of the Immigration Reform Act of 2004 are published; and

“(ii) under section 101(a)(15)(H)(ii)(b) may not exceed 100,000 in each of the 5 fiscal years following the fiscal year in which the final regulations implementing the amendments made by title II of the Immigration Reform Act of 2004 are published, and may not exceed 66,000 in each fiscal year thereafter.”.

#### SEC. 212. IMMIGRATION STUDY COMMISSION.

(a) ESTABLISHMENT.—On the date that is 3 years after the date of enactment of this Act, there shall be established a commission, to be known as the Immigration Study Commission (referred to in this section as the “Commission”) to review the impact of this Act on the national security of the United States, the national economy, and families, and to make recommendations to Congress.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 12 members, of which—

(A) 3 members shall be appointed by the majority leader of the Senate;

(B) 3 members shall be appointed by the minority leader of the Senate;

(C) 3 members shall be appointed by the Speaker of the House of Representatives; and

(D) 3 members shall be appointed by the minority leader of the House of Representatives.

(2) QUALIFICATIONS.—The Commission members shall represent the public and private sectors and have expertise in areas that would best inform the work of the Commission, including national security experts, economists, sociologists, worker representatives, business representatives, and immigration lawyers.

(3) CHAIRPERSON.—The chairperson of the Commission shall be a Commission member agreed upon by the majority and minority leaders of the Senate, and the Speaker and the minority leader of the House of Representatives.

(4) COMPENSATION AND EXPENSES.—The members of the Commission shall not receive compensation for the performance of services for the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(5) TERMS.—Each member shall be appointed for the life of the Commission. Any vacancy shall be filled by whomever initially appointed the member of that seat.

(c) ADMINISTRATIVE PROVISIONS.—

(1) LOCATION.—The Commission shall be located in a facility maintained by the Bureau of Citizenship and Immigration Services.

(2) 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.

(3) 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 the provisions of this section. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

(4) **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 the objectives of this section, except that, to the extent possible, the Commission shall use existing data and research.

(5) **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) **REPORT.**—Not later than 1 year after all of the members are appointed to the Commission, the Commission shall submit to Congress a preliminary report that summarizes the directions of the Commission and initial recommendations. Not later than 2 years after the Commission members are appointed, the Commission shall submit to Congress a report that summarizes the findings of the Commission and make such recommendations as are consistent with this Act.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Bureau of Citizenship and Immigration Services such sums as may be necessary to carry out this section.

#### SEC. 213. CHANGE OF STATUS.

Section 212(t) of the Immigration and Nationality Act (8 U.S.C. 1182(t)), as amended by section 207, is further amended by adding after paragraph (10) the following:

“(11) An alien admitted as a nonimmigrant or otherwise provided status under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) shall be eligible to obtain a change of status to another immigrant or nonimmigrant classification that the alien may be eligible for.”

#### SEC. 214. ADJUSTMENT OF STATUS TO LAWFUL PERMANENT RESIDENT.

(a) **EMPLOYMENT-BASED IMMIGRANT VISAS.**—Section 212(t) of the Immigration and Nationality Act (8 U.S.C. 1182(t)), as amended by section 213, is further amended by adding after paragraph (11) the following:

“(12)(A) Nonimmigrant aliens admitted or otherwise provided status under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) shall be eligible for an employment-based immigrant visa pursuant to section 203(b)(3) and adjustment of status pursuant to section 245.

“(B) Pursuant to subparagraph (A), for purposes of adjustment of status under section 245(a) or issuance of an immigrant visa under section 203(b)(3), employment-based immigrant visas shall be made available, without regard to any numerical limitation imposed by section 201 or 202, to an alien having nonimmigrant status described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) upon the filing of a petition for such a visa by—

“(i) the employer or any collective bargaining agent of the alien; or

“(ii) the alien, provided the alien has been employed under such nonimmigrant status for at least 3 years.

“(C) The spouse or child of an alien granted status under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) shall be eligible as a derivative beneficiary for an immigrant visa and adjustment of status.”

(b) **DUAL INTENT.**—Section 214(h) of the Immigration and Nationality Act (8 U.S.C. 1184(h)) is amended by inserting “(H)(ii)(b), (H)(ii)(c),” after “(H)(i),”.

#### SEC. 215. GROUNDS OF INADMISSIBILITY.

Section 212(t) of the Immigration and Nationality Act (8 U.S.C. 1182(t)), as amended by section 214(a), is further amended by adding after paragraph (12) the following:

“(13) In determining the admissibility of an alien under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H), violations of grounds of inadmissibility described in paragraphs (5),

(6)(A), (6)(B), (6)(C), (6)(G), (7), (9), and (10)(B) of section 212(a) committed prior to the application under such section, or the approval of a change of status to a classification under such section shall not apply if the violation was committed before the date of introduction of the Immigration Reform Act of 2004.”

#### SEC. 216. PETITION FEES.

Section 212(t) of the Immigration and Nationality Act (8 U.S.C. 1182(t)), as amended by section 215, is further amended by adding after paragraph (13) the following:

“(14)(A) An employer filing a petition for an alien described in section 101(a)(15)(H)(ii)(c) shall be required to pay a filing fee for each alien, based on the cost of carrying out the processing duties under this subsection, and a secondary fee of—

“(i) \$250, in the case of an employer employing 25 employees or less;

“(ii) \$500, in the case of an employer employing between 26 and 150 employees;

“(iii) \$750, in the case of an employer employing between 151 and 500 employees; or

“(iv) \$1,000, in the case of an employer employing more than 500 employees.

“(B) An employer filing a petition for an alien described in section 101(a)(15)(H)(ii)(b) shall be required to pay a filing fee for each alien, based on the costs of carrying out the processing duties under this subsection, and a secondary fee of—

“(i) \$125, in the case of an employer employing 25 employees or less;

“(ii) \$250, in the case of an employer employing between 26 and 150 employees;

“(iii) \$375, in the case of an employer employing between 151 and 500 employees; or

“(iv) \$500, in the case of an employer employing more than 500 employees.

“(C) The fees collected under this paragraph shall be deposited into accounts within the Department of Homeland Security, the Department of Labor, and the Department of State, and allocated such that—

“(i) 15 percent of the amounts received shall be made available to the Department of Homeland Security until expended to carry out the requirements related to processing petitions filed by employers for aliens described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H);

“(ii) 20 percent of the amounts received shall be made available to the Department of Labor until expended to—

“(I) carry out the requirements related to processing attestations filed by employers for aliens described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H); and

“(II) increase the funds available to the United States Employment Services to assist State employment service agencies in responding to employers and employees contacting such agencies as a result of paragraph (1);

“(iii) 15 percent of the amounts received shall be made available to the Department of State until expended to carry out the requirements related to processing applications for visas by aliens under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H);

“(iv) 20 percent of the amounts received shall be made available for the performance of functions under section 212(t)(8)(F) as the Secretary of Labor and the Special Counsel of the Office of the Special Counsel for Immigration-Related Unfair Employment Practices within the Department of Justice may agree; and

“(v) 30 percent of the amounts received shall be made available to the Department of Homeland Security for implementation of border security measures.”

#### SEC. 217. TERMINATION OF H-2C TEMPORARY WORKER PROGRAM.

Section 212(t) of the Immigration and Nationality Act (8 U.S.C. 1182(t)), as amended

by section 216, is further amended by adding after paragraph (14) the following:

“(15) The temporary worker program for aliens described in section 101(a)(15)(H)(ii)(c) shall terminate at the end of the fiscal year that is 5 years after the fiscal year in which the final regulations implementing the amendments made by title II of the Immigration Reform Act of 2004 are published. Congress shall review the temporary worker program before the expiration of the program based on the findings and recommendations submitted by the Immigration Study Commission under section 212(d) of the Immigration Reform Act of 2004.”

#### SEC. 218. DEFINITIONS.

Section 212(t) of the Immigration and Nationality Act (8 U.S.C. 1182(t)), as amended by section 217, is further amended by adding after paragraph (15) the following:

“(16) In this subsection:

“(A) The term ‘employer’ means any person or entity that employs workers in labor or services that are not agricultural, and shall not include recruiting entities or job shops.

“(B) The term ‘job opportunity’ means a job opening for temporary full-time or part-time employment at a place in the United States to which United States workers can be referred.

“(C)(i) The term ‘lays off’, with respect to a worker—

“(I) means to cause the worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, contract impossibility, termination of the position or company, temporary layoffs due to weather, markets, or other temporary conditions; but

“(II) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

“(ii) Nothing in this subparagraph is intended to limit an employee’s rights under a collective bargaining agreement or other employment contract.

“(D) The term ‘United States worker’ means any worker, whether a United States citizen or national, a lawfully admitted permanent resident alien, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H).”

#### SEC. 219. COLLECTIVE BARGAINING AGREEMENTS.

Notwithstanding any other provision of law, the fact that an individual holds a visa as a nonimmigrant worker described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) shall not render that individual ineligible to qualify as an employee under the National Labor Relations Act (29 U.S.C. 151 et seq.) or to be protected under section 7 of that Act (29 U.S.C. 157).

#### SEC. 220. REPORT ON WAGE DETERMINATION.

Not later than 2 years after the date of enactment of this Act, the Bureau of Labor Statistics shall prepare and transmit to the Committees on Health, Education, Labor and Pensions and the Judiciary in the Senate and the Committees on Education and the Workforce and the Judiciary in the House of Representatives, a report that addresses—

(1) whether the employment of workers described in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) in the

United States workforce has impacted United States worker wages;

(2) whether any changes should be made for a future wage system, based on, *inter alia*, an examination of the Occupational Employment System survey, its calculation of wage data based on skill and experience levels, difference among types of employers (specifically for-profit and nonprofit, and government and nongovernment);

(3) whether use of private, independent wage surveys would provide accurate and reliable criteria to determine wage rates; and

(4) any other recommendations that are warranted.

#### **SEC. 221. INELIGIBILITY FOR CERTAIN NON-IMMIGRANT STATUS.**

(a) **BAR TO FUTURE VISAS FOR CONDITION VIOLATIONS.**—Any alien who has status pursuant to section 245B of the Immigration and Nationality Act, as added by title III, or clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)), shall not be eligible in the future for such nonimmigrant status if the alien violates any term or condition of such status.

(b) **ALIENS UNLAWFULLY PRESENT.**—Any alien who enters the United States after the date of enactment of this Act without being admitted or paroled shall be ineligible for nonimmigrant status under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)).

#### **SEC. 222. INVESTIGATIONS BY DEPARTMENT OF HOMELAND SECURITY DURING LABOR DISPUTES.**

(a) **IN GENERAL.**—When information is received by the Department of Homeland Security concerning the employment of undocumented or unauthorized aliens, consideration should be given to whether the information is being provided to interfere with the rights of employees to—

(1) form, join, or assist labor organizations or to exercise their rights not to do so;

(2) be paid minimum wages and overtime;

(3) have safe work places;

(4) receive compensation for work related injuries;

(5) be free from discrimination based on race, gender, age, national origin, religion, or handicap; or

(6) retaliate against employees for seeking to vindicate these rights.

(b) **DETERMINATION OF LABOR DISPUTE.**—Whenever information received from any source creates a suspicion that an immigration enforcement action might involve the Department of Homeland Security in a labor dispute, a reasonable attempt should be made by Department of Homeland Security enforcement officers to determine whether a labor dispute is in progress. The information officer at the regional office of the National Labor Relations Board can supply status information on unfair labor practice charges or union election or decertification petitions that are pending involving most private sector, non-agricultural employers. Wage and hour information can be obtained from the Wage and Hour Division of the Department of Labor or the State labor department.

(c) **RELEVANT QUESTIONS FOR INFORMANT.**—In order to protect the Department of Homeland Security from unknowingly becoming involved in a labor dispute, persons who provide information to the Department of Homeland Security about the employer or employees involved in the dispute should be asked—

(1) their names;

(2) whether there is a labor dispute in progress at the worksite;

(3) whether the person is or was employed at the worksite in question (or by a union representing workers at the worksite);

(4) if applicable, whether the person is or was employed in a supervisory or managerial capacity or is related to anyone who is;

(5) how the person came to know that the subjects lacked legal authorization to work, as well as the source and reliability of the information concerning the subject's status;

(6) whether the person had or is having a dispute with the employer or the subjects of the information; and

(7) if the subjects of the information have raised complaints or grievances about hours, working conditions, discriminatory practices, or union representation or actions, or whether the subjects have filed workers' compensation claims.

(d) **BICE REVIEW.**—There is no prohibition for enforcing the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), even when there may be a labor dispute in progress, however, where it appears that information may have been provided in order to interfere with or to retaliate against employees for exercising their rights, no action should be taken on this information without review and approval by the Bureau of Immigration and Customs Enforcement.

(e) **ENFORCEMENT ACTION.**—When enforcement action is taken by the Department of Homeland Security and the Department determines that there is a labor dispute in progress, or that information was provided to the Department of Homeland Security to retaliate against employees for exercising their employment rights, the lead immigration officer in charge of the Department of Homeland Security enforcement team at the worksite must ensure, to the extent possible, that any aliens who are arrested or detained and are necessary for the prosecution of any violations are not removed from the country without notifying the appropriate law enforcement agency that has jurisdiction over the violations.

(f) **INTERVIEWS.**—Any arrangements for aliens to be held or interviewed by investigators or attorneys for the Department of Labor, the State labor department, the National Labor Relations Board, or any other agencies or entities that enforce labor or employment laws will be determined on a case-by-case basis.

#### **SEC. 223. PROTECTION OF WITNESSES.**

Chapter 8 of title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended by adding after section 280 the following:

##### **“STAY OF REMOVAL**

“SEC. 280A. (a) An alien against whom removal proceedings have been initiated pursuant to chapter 4, who has filed a workplace claim or who is a material witness in any pending or anticipated proceeding involving a workplace claim, shall be entitled to a stay of removal and to an employment authorized endorsement unless the Department of Labor established by a preponderance of the evidence in proceedings before the immigration judge presiding over that alien's removal hearing—

“(1) that—

“(A) the Department of Homeland Security initiated the alien's removal proceeding for wholly independent reasons and not in any respect based on, or as a result of, any information provided to or obtained by the Department of Homeland Security from the alien's employer, from any outside source, including any anonymous source, or as a result of the filing or prosecution of the workplace claim; and

“(B) the workplace claim was filed with a bad faith intent to delay or avoid the alien's removal; or

“(2) that the alien has engaged in criminal conduct or is a threat to the national security of the United States.

“(b) Any stay of removal or work authorization issued pursuant to subsection (a) shall remain valid and in effect at least during the pendency of the proceedings concerning such workplace claim. The Secretary of Homeland Security shall extend such relief for a period of not longer than 3 additional years upon determining that—

“(1) such relief would enable the alien asserting the workplace claim to be made whole;

“(2) the deterrent goals of any statute underlying the workplace claim would thereby be served; or

“(3) such extension would otherwise further the interests of justice.

“(c) In this section—

“(1) the term ‘workplace claim’ shall include any claim, charge, complaint, or grievance filed with or submitted to the employer, a Federal or State agency or court, or an arbitrator, to challenge an employer's alleged civil or criminal violation of any legal or administrative rule or requirement affecting the terms or conditions of its workers' employment or the hiring or firing of its workers; and

“(2) the term ‘material witness’ means an individual who presents an affidavit from an attorney prosecuting or defending the workplace claim or from the presiding officer overseeing the workplace claim attesting that, to the best of the affiant's knowledge and belief, reasonable cause exists to believe that the testimony of the individual will be crucial to the outcome of the workplace claim.

“CONFIDENTIALITY OF IMMIGRATION INFORMATION OBTAINED DURING ADMINISTRATIVE PROCEEDINGS

“SEC. 280B. (a) No officer or employee, including any former officer or employee, of any Federal or State administrative agency with jurisdiction over any employer's workplace shall disclose to the Department of Homeland Security, or cause to be published in a manner that discloses to the Department of Homeland Security, any information concerning the immigration status of any worker obtained by that officer or employee in connection with the official duties of that officer or employee, and the Department of Homeland Security shall not, in any enforcement action or removal proceeding, use or rely upon, in whole or in part, any information so obtained.

“(b) Any person who knowingly uses, publishes, or permits information to be used in violation of subsection (a) shall be fined not more than \$10,000.”.

#### **SEC. 224. DOCUMENT FRAUD.**

Section 274C(d)(3) of the Immigration and Nationality Act (8 U.S.C. 1324c(d)(3)) is amended by inserting before “In applying this subsection” the following: “The civil penalties set forth in subparagraphs (A) and (B) shall be tripled in the case of any commercial enterprise that commits any violation of subsection (a) principally for commercial advantage or financial gain.”.

### **TITLE III—ACCESS TO EARNED ADJUSTMENT**

#### **SEC. 301. ADJUSTMENT OF STATUS.**

(a) **IN GENERAL.**—Chapter 5 of title II of the Immigration and Nationality Act (8 U.S.C. 1255 et seq.) is amended by inserting after section 245A the following:

##### **“ACCESS TO EARNED ADJUSTMENT**

“SEC. 245B. Access to earned adjustment.

“(a) **ADJUSTMENT OF STATUS.**—

“(1) **PRINCIPAL ALIENS.**—Notwithstanding any other provision of law, the Secretary of Homeland Security shall adjust to the status of an alien lawfully admitted for permanent residence, an alien who satisfies the following requirements:



“(A) APPLICATION.—The alien shall file an application establishing eligibility for adjustment of status and pay the fine required under subsection (m) and any additional amounts owed under that subsection.

“(B) CONTINUOUS PHYSICAL PRESENCE.—

“(i) IN GENERAL.—The alien shall establish that the alien—

“(I) was physically present in the United States for at least 5 years preceding the date of introduction of the Immigration Reform Act of 2004;

“(II) was not legally present on the date of introduction of the Immigration Reform Act of 2004; and

“(III) has not departed from the United States except for brief, casual, and innocent departures.

“(ii) LEGALLY PRESENT.—For purposes of this subparagraph, an alien who has violated any conditions of his or her visa shall not be considered to be legally present in the United States.

“(C) ADMISSIBLE UNDER IMMIGRATION LAWS.—The alien shall establish that the alien is not inadmissible under section 212(a) except for any provision of that section that is waived under subsection (b) of this section.

“(D) EMPLOYMENT IN UNITED STATES.—

“(i) IN GENERAL.—The alien shall have been employed in the United States, in the aggregate, for—

“(I) at least 3 of the 5 years immediately preceding the date on which the Immigration Reform Act of 2004 was introduced; and

“(II) at least 1 year following the date of enactment of such Act.

“(ii) EXCEPTIONS.—The employment requirements in clause (i) shall not apply to an individual who is under 20 years of age on the date of introduction of the Immigration Reform Act of 2004, and the employment requirement in clause (i)(II) shall be reduced for an individual who cannot demonstrate employment based on a physical or mental disability or as a result of pregnancy.

“(iii) PORTABILITY.—An alien shall not be required to complete the employment requirements in clause (i) with the same employer.

“(iv) EVIDENCE OF EMPLOYMENT.—

“(I) CONCLUSIVE DOCUMENTS.—For purposes of satisfying the requirements in clause (i), the alien shall submit at least 2 of the following documents for each period of employment, which shall be considered conclusive evidence of such employment:

“(aa) Records maintained by the Social Security Administration.

“(bb) Records maintained by an employer, such as pay stubs, time sheets, or employment work verification.

“(cc) Records maintained by the Internal Revenue Service.

“(dd) Records maintained by a union or day labor center.

“(ee) Records maintained by any other government agency, such as worker compensation records, disability records, or business licensing records.

“(II) OTHER DOCUMENTS.—Aliens unable to submit documents described in subclause (I) shall submit at least 3 other types of reliable documents, including sworn declarations, for each period of employment to satisfy the requirement in clause (i).

“(III) INTENT OF CONGRESS.—It is the intent of Congress that the requirement in clause (i) be interpreted and implemented in a manner that recognizes and takes into account the difficulties encountered by aliens in obtaining evidence of employment due to the undocumented status of the alien.

“(v) BURDEN OF PROOF.—An alien applying for adjustment of status under this subsection has the burden of proving by a preponderance of the evidence that the alien has

satisfied the employment requirements in clause (i). An alien may satisfy such burden of proof by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference. Once the burden is met, the burden shall shift to the Secretary of Homeland Security to disprove the alien's evidence with a showing which negates the reasonableness of the inference to be drawn from the evidence.

“(E) PAYMENT OF INCOME TAXES.—Not later than the date on which status is adjusted under this subsection, the alien shall establish the payment of all Federal income taxes owed for employment during the period of employment required under subparagraph (D)(i). The alien may satisfy such requirement by establishing that—

“(i) no such tax liability exists;

“(ii) all outstanding liabilities have been met; or

“(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

“(F) BASIC CITIZENSHIP SKILLS.—

“(i) IN GENERAL.—Except as provided in clause (ii), the alien shall demonstrate that the alien either—

“(I) meets the requirements of section 312(a) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or

“(II) is satisfactorily pursuing a course of study, recognized by the Secretary of Homeland Security, to achieve such understanding of English and the history and government of the United States.

“(ii) EXCEPTIONS.—

“(I) MANDATORY.—The requirements of clause (i) shall not apply to any person who is unable to comply with those requirements because of a physical or developmental disability or mental impairment.

“(II) DISCRETIONARY.—The Secretary of Homeland Security may waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older as of the date of the filing of the application for adjustment of status.

“(G) SECURITY AND LAW ENFORCEMENT CLEARANCES.—The alien shall submit fingerprints in accordance with procedures established by the Secretary of Homeland Security. Such fingerprints shall be submitted to relevant Federal agencies to be checked against existing databases for information relating to criminal, national security, or other law enforcement actions that would render the alien ineligible for adjustment of status under this subsection. The relevant Federal agencies shall work to ensure that such clearances are completed within 90 days of the submission of fingerprints. An appeal of a security clearance determination by the Secretary of Homeland Security shall be processed through the Department of Homeland Security.

“(H) MILITARY SELECTIVE SERVICE.—The alien shall establish that if the alien is within the age period required under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), that such alien has registered under that Act.

“(2) SPOUSES AND CHILDREN.—

“(A) IN GENERAL.—

“(i) ADJUSTMENT OF STATUS.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall, if otherwise eligible under subparagraph (B), adjust the status to that of a lawful permanent resident for—

“(I) the spouse, or child who was under 21 years of age on the date of enactment of the Immigration Reform Act of 2004, of an alien who adjusts status or is eligible to adjust status to that of a permanent resident under paragraph (1); or

“(II) an alien who, within 5 years preceding the date of enactment of the Immigration Reform Act of 2004, was the spouse or child of an alien who adjusts status to that of a permanent resident under paragraph (1), if—

“(aa) the termination of the qualifying relationship was connected to domestic violence; or

“(bb) the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent who adjusts status or is eligible to adjust status to that of a permanent resident under paragraph (1).

“(ii) APPLICATION OF OTHER LAW.—In acting on applications filed under this paragraph with respect to aliens who have been battered or subjected to extreme cruelty, the Secretary of Homeland Security shall apply the provisions of section 204(a)(1)(J) and the protections, prohibitions, and penalties under section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).

“(B) GROUNDS OF INADMISSIBILITY NOT APPLICABLE.—In establishing admissibility to the United States, the spouse or child described in subparagraph (A) shall establish that they are not inadmissible under section 212(a), except for any provision of that section that is waived under subsection (b) of this section.

“(C) SECURITY AND LAW ENFORCEMENT CLEARANCE.—The spouse or child, if that child is 14 years of age or older, described in subparagraph (A) shall submit fingerprints in accordance with procedures established by the Secretary of Homeland Security. Such fingerprints shall be submitted to relevant Federal agencies to be checked against existing databases for information relating to criminal, national security, or other law enforcement actions that would render the alien ineligible for adjustment of status under this subsection. The relevant Federal agencies shall work to ensure that such clearances are completed within 90 days of the submission of fingerprints. An appeal of a denial by the Secretary of Homeland Security shall be processed through the Department of Homeland Security.

“(3) NONAPPLICABILITY OF NUMERICAL LIMITATIONS.—When an alien is granted lawful permanent resident status under this subsection, the number of immigrant visas authorized to be issued under any provision of this Act shall not be reduced.

“(b) GROUNDS OF INADMISSIBILITY.—In the determination of an alien's admissibility under paragraphs (1)(C) and (2) of subsection (a), the following shall apply:

“(A) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Secretary of Homeland Security under subparagraph (C)(i) of this subsection:

“(i) Paragraph (1) (relating to health).

“(ii) Paragraph (2) (relating to criminals).

“(iii) Paragraph (3) (relating to security and related grounds).

“(iv) Subparagraphs (A) and (C) of paragraph (10) (relating to polygamists and child abductors).

“(B) GROUNDS OF INADMISSIBILITY NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (6)(B), (6)(C), (6)(F), (6)(G), (7), (9), and (10)(B) of section 212(a) shall not apply to an alien who is applying for adjustment of status under subsection (a).

“(C) WAIVER OF OTHER GROUNDS.—

“(i) IN GENERAL.—Except as provided in subparagraph (A), the Secretary of Homeland Security may waive any provision of section 212(a) in the case of individual aliens for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest.

“(ii) CONSTRUCTION.—Nothing in this subparagraph shall be construed as affecting the

authority of the Secretary of Homeland Security, other than under this subparagraph, to waive the provisions of section 212(a).

“(D) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under subsection (a) by reason of a ground of inadmissibility under section 212(a)(4) if the alien establishes a history of employment in the United States evidencing self-support without public cash assistance.

“(E) SPECIAL RULE FOR INDIVIDUALS WHERE THERE IS NO COMMERCIAL PURPOSE.—An alien is not ineligible for adjustment of status under subsection (a) by reason of a ground of inadmissibility under section 212(a)(6)(E) if the alien establishes that the action referred to in that section was taken for humanitarian purposes, to ensure family unity, or was otherwise in the public interest.

“(F) APPLICABILITY OF OTHER PROVISIONS.—Section 241(a)(5) and section 240B(d) shall not apply with respect to an alien who is applying for adjustment of status under subsection (a).

“(C) TREATMENT OF APPLICANTS.—

“(1) IN GENERAL.—An alien who files an application under subsection (a)(1)(A) for adjustment of status, including a spouse or child who files for adjustment of status under subsection (b)—

“(A) shall be granted employment authorization pending final adjudication of the alien's application for adjustment of status;

“(B) shall be granted permission to travel abroad pursuant to regulation pending final adjudication of the alien's application for adjustment of status;

“(C) shall not be detained, determined inadmissible or deportable, or removed pending final adjudication of the alien's application for adjustment of status, unless the alien commits an act which renders the alien ineligible for such adjustment of status; and

“(D) shall not be considered an unauthorized alien as defined in section 274A(h)(3) until such time as employment authorization under subparagraph (A) is denied.

“(2) DOCUMENT OF AUTHORIZATION.—The Secretary of Homeland Security shall provide each alien described in paragraph (1) with a counterfeit-resistant document of authorization that meets all current requirements established by the Secretary of Homeland Security for travel documents and reflects the benefits and status set forth in subparagraphs (A) through (D) of paragraph (1).

“(3) SECURITY AND LAW ENFORCEMENT CLEARANCE.—Before an alien is granted employment authorization or permission to travel under paragraph (1), the alien shall be required to undergo a name check against existing databases for information relating to criminal, national security, or other law enforcement actions. The relevant Federal agencies shall work to ensure that such name checks are completed not later than 90 days after the date on which the name check is requested.

“(4) TERMINATION OF PROCEEDINGS.—An alien in removal proceedings who establishes prima facie eligibility for adjustment of status under subsection (a) shall be entitled to termination of the proceedings pending the outcome of the alien's application, unless the removal proceedings are based on criminal or national security grounds.

“(d) APPREHENSION BEFORE APPLICATION PERIOD.—The Secretary of Homeland Security shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a) and who can establish prima facie eligibility to have the alien's status adjusted under that subsection (but for the fact that the alien may not apply for such adjustment until the beginning of such period), until the

alien has had the opportunity during the first 180 days of the application period to complete the filing of an application for adjustment, the alien may not be removed from the United States unless the alien is removed on the basis that the alien has engaged in criminal conduct or is a threat to the national security of the United States.

“(e) CONFIDENTIALITY OF INFORMATION.—

“(1) IN GENERAL.—Except as otherwise provided in this section, no Federal agency or bureau, nor any officer or employee of such agency or bureau, may—

“(A) use the information furnished by the applicant pursuant to an application filed under paragraph (1) or (2) of subsection (a) for any purpose other than to make a determination on the application;

“(B) make any publication through which the information furnished by any particular applicant can be identified; or

“(C) permit anyone other than the sworn officers and employees of such agency, bureau, or approved entity, as approved by the Secretary of Homeland Security, to examine individual applications that have been filed.

“(2) REQUIRED DISCLOSURES.—The Secretary of Homeland Security and the Secretary of State shall provide the information furnished pursuant to an application filed under paragraph (1) or (2) of subsection (a), and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution or a national security investigation or prosecution, in each instance about an individual suspect or group of suspects, when such information is requested in writing by such entity.

“(3) CRIMINAL PENALTY.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this subsection shall be fined not more than \$10,000.

“(f) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

“(1) CRIMINAL PENALTY.—

“(A) VIOLATION.—It shall be unlawful for any person to—

“(i) file or assist in filing an application for adjustment of status under this section and knowingly and willfully falsify, conceal, or cover up a material fact or make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

“(ii) create or supply a false writing or document for use in making such an application.

“(B) PENALTY.—Any person who violates subparagraph (A) shall be fined in accordance with title 18, United States Code, or imprisoned not more than 5 years, or both.

“(2) INADMISSIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States.

“(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), any alien or other entity (including an employer or union) that submits an employment record that contains incorrect data that the alien used in order to obtain such employment, shall not have violated this subsection.

“(g) INELIGIBILITY FOR PUBLIC BENEFITS.—For purposes of section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613), an alien whose status has been adjusted in accordance with subsection (a) shall not be eligible for any Federal means-tested public benefit unless the alien meets the alien eligibility criteria for such benefit under title IV of such Act (8 U.S.C. 1601 et seq.).

“(h) RELATIONSHIPS OF APPLICATION TO CERTAIN ORDERS.—

“(1) IN GENERAL.—An alien who is present in the United States and has been ordered excluded, deported, removed, or to depart voluntarily from the United States under any provision of this Act may, notwithstanding such order, apply for adjustment of status under subsection (a). Such an alien shall not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate the exclusion, deportation, removal or voluntary departure order. If the Secretary of Homeland Security grants the application, the order shall be canceled. If the Secretary of Homeland Security renders a final administrative decision to deny the application, such order shall be effective and enforceable. Nothing in this paragraph shall affect the review or stay of removal under subsection (j).

“(2) STAY OF REMOVAL.—The filing of an application described in paragraph (1) shall stay the removal or detainment of the alien pending final adjudication of the application, unless the removal or detainment of the alien is based on criminal or national security grounds.

“(i) APPLICATION OF OTHER IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Nothing in this section shall preclude an alien who may be eligible to be granted adjustment of status under subsection (a) from seeking such status under any other provision of law for which the alien may be eligible.

“(j) ADMINISTRATIVE AND JUDICIAL REVIEW.—

“(1) IN GENERAL.—Except as provided in this subsection, there shall be no administrative or judicial review of a determination respecting an application for adjustment of status under subsection (a).

“(2) ADMINISTRATIVE REVIEW.—

“(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary of Homeland Security shall establish an appellate authority to provide for a single level of administrative appellate review of a determination respecting an application for adjustment of status under subsection (a).

“(B) STANDARD FOR REVIEW.—Administrative appellate review referred to in subparagraph (A) shall be based solely upon the administrative record established at the time of the determination on the application and upon the presentation of additional or newly discovered evidence during the time of the pending appeal.

“(3) JUDICIAL REVIEW.—

“(A) DIRECT REVIEW.—A person whose application for adjustment of status under subsection (a) is denied after administrative appellate review under paragraph (2) may seek review of such denial, in accordance with chapter 7 of title 5, United States Code, before the United States district court for the district in which the person resides.

“(B) REVIEW AFTER REMOVAL PROCEEDINGS.—There shall be judicial review in the Federal courts of appeal of the denial of an application for adjustment of status under subsection (a) in conjunction with judicial review of an order of removal, deportation, or exclusion, but only if the validity of the denial has not been upheld in a prior judicial proceeding under subparagraph (A). Notwithstanding any other provision of law, the standard for review of such a denial shall be governed by subparagraph (C).

“(C) STANDARD FOR JUDICIAL REVIEW.—Judicial review of a denial of an application under this section shall be based solely upon the administrative record established at the time of the review. The findings of fact and other determinations contained in the record shall be conclusive unless the applicant can

establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record, considered as a whole.

“(4) **STAY OF REMOVAL.**—Aliens seeking administrative or judicial review under this subsection shall not be removed from the United States until a final decision is rendered establishing ineligibility under this section, unless such removal is based on criminal or national security grounds.

“(k) **DISSEMINATION OF INFORMATION ON ADJUSTMENT PROGRAM.**—During the 12 months following the issuance of final regulations in accordance with subsection (o), the Secretary of Homeland Security, in cooperation with approved entities, approved by the Secretary of Homeland Security, shall broadly disseminate information respecting adjustment of status under this section and the requirements to be satisfied to obtain such status. The Secretary of Homeland Security shall also disseminate information to employers and labor unions to advise them of the rights and protections available to them and to workers who file applications under this section. Such information shall be broadly disseminated, in the languages spoken by the top 15 source countries of the aliens who would qualify for adjustment of status under this section, including to television, radio, and print media such aliens would have access to.

“(l) **EMPLOYER PROTECTIONS.**—

“(1) **IMMIGRATION STATUS OF ALIEN.**—Employers of aliens applying for adjustment of status under this section shall not be subject to civil and criminal tax liability relating directly to the employment of such alien.

“(2) **PROVISION OF EMPLOYMENT RECORDS.**—Employers that provide unauthorized aliens with copies of employment records or other evidence of employment pursuant to an application for adjustment of status under this section or any other application or petition pursuant to other provisions of the immigration laws, shall not be subject to civil and criminal liability pursuant to section 274A for employing such unauthorized aliens.

“(3) **APPLICABILITY OF OTHER LAW.**—Nothing in this subsection shall be used to shield an employer from liability pursuant to section 274B or any other labor and employment law provisions.

“(m) **AUTHORIZATION OF FUNDS; FINES.**—

“(1) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Department of Homeland Security such sums as are necessary to commence the processing of applications filed under this section.

“(2) **FINE.**—An alien who files an application under this section shall pay a fine commensurate with levels charged by the Department of Homeland Security for other applications for adjustment of status.

“(3) **ADDITIONAL AMOUNTS OWED.**—Prior to the adjudication of an application for adjustment of status filed under this section, the alien shall pay an amount equaling \$1,000, but such amount shall not be required from an alien under the age of 18.

“(4) **USE OF AMOUNTS COLLECTED.**—The Secretary of Homeland Security shall deposit payments received under this subsection in the Immigration Examinations Fee Account, and these payments in such account shall be available, without fiscal year limitation, such that—

“(A) 60 percent of such funds shall be available to the Department of Homeland Security for implementing and processing applications under this section; and

“(B) 40 percent of such funds shall be available to the Department of Homeland Security and the Department of State to cover administrative and other expenses incurred in connection with the review of applications

filed by immediate relatives as a result of the amendments made by title I of the Immigration Reform Act of 2004.

“(n) **TRANSITIONAL WORKERS.**—

“(1) **ELIGIBILITY FOR TRANSITIONAL WORKER STATUS.**—Any alien who is physically present in the United States on the date of introduction of the Immigration Reform Act of 2004 who seeks to adjust status under this section but does not satisfy the requirements of subparagraph (B) or (D) of subsection (a)(1) shall be eligible—

“(A) to apply for transitional worker status, which shall have a duration period of not more than 3 years from the date of issuance of the transitional worker card, without having to depart the United States; and

“(B) be granted employment authorization and permission to travel abroad for a period of not more than 3 years from the date of issuance of the transitional worker card.

“(2) **DOCUMENT OF AUTHORIZATION.**—The Secretary of Homeland Security shall issue each alien described in paragraph (1) with a counterfeit-resistant document of authorization that meets all requirements established by the Secretary of Homeland Security for travel documents and reflects the benefits and status set forth in paragraph (1)(B).

“(3) **SECURITY AND LAW ENFORCEMENT CLEARANCE.**—Before an alien described in paragraph (1) is granted employment authorization or permission to travel abroad, such alien shall be required to undergo a name check against existing databases for information relating to criminal, security, and other law enforcement actions. The relevant Federal agencies shall work to ensure that such name checks are completed as expeditiously as possible.

“(4) **ELIGIBILITY FOR ADJUSTMENT OF STATUS.**—An alien shall be eligible for adjustment of status to that of a lawful permanent resident under this subsection if the alien—

“(A) has applied for transitional worker status under paragraph (1);

“(B) is lawfully employed in the United States in the aggregate for—

“(i) more than 2 but less than 3 of the 5 years immediately preceding the date on which the Immigration Reform Act of 2004 was introduced; and

“(ii) at least 2 years following the date of enactment of that Act; and

“(C) was present in the United States on and after the date of introduction of that Act (without regard to any brief, casual, and innocent departures from the United States).

“(5) **EXCEPTIONS.**—The employment requirements in paragraph (4)(B) shall not apply to an individual who is under 20 years of age on the date on which the Immigration Reform Act of 2004 was introduced, and the employment requirement in paragraph (4)(B)(ii) shall be reduced for an individual who cannot demonstrate employment based on a physical or mental disability or as a result of pregnancy.

“(6) **PORTABILITY.**—An alien shall not be required to complete the employment requirements in paragraph (4) with the same employer.

“(7) **ADJUSTMENT OF STATUS.**—An alien who meets the requirements of paragraph (4) and applies for adjustment of status to that of a lawful permanent resident under this subsection shall be required to comply with the requirements of subparagraphs (C), (E), (F), (G), and (H) of subsection (a)(1). In adjudicating such an application, the Secretary of Homeland Security shall determine the admissibility of the alien in accordance with subsection (b).

“(8) **SPOUSES AND CHILDREN.**—

“(A) **ADJUSTMENT OF STATUS.**—Notwithstanding any other provision of law, the Secretary of Homeland Security shall, if other-

wise eligible under subsection (b), adjust the status to that of a lawful permanent resident or provide an immigrant visa to—

“(i) the spouse or child of an alien who adjusts status or is eligible to adjust status to that of a lawful permanent resident under this subsection; or

“(ii) an alien who was the spouse or child of an alien who adjusts status to that of a lawful permanent resident under this subsection, if—

“(I) the termination of the qualifying relationship was connected to domestic violence; or

“(II) the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent who adjusts status to that of a lawful permanent resident under this subsection.

“(B) **DOCUMENT OF AUTHORIZATION.**—The Secretary of Homeland Security shall issue each alien described in subparagraph (A) with a counterfeit-resistant document of authorization that meets all requirements established by the Secretary of Homeland Security for travel documents and reflects the status set forth in that subparagraph.

“(C) **APPLICATION OF OTHER LAW.**—In acting on applications filed under this subsection with respect to aliens who have been battered or subjected to extreme cruelty, the Secretary of Homeland Security shall apply the provisions of section 204(a)(1)(J) and the protections, prohibitions, and penalties under section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).

“(9) **NONAPPLICABILITY OF NUMERICAL LIMITATIONS.**—When an alien is granted legal permanent resident status under this subsection, the number of immigrant visas authorized to be issued under any provision of this Act shall not be reduced.

“(10) **TERMINATION OF AUTHORITY.**—No action may be taken under this subsection in the case of an alien who submits an application for transitional worker status under paragraph (1) more than 3 years after the date on which final regulations implementing this section take effect.

“(o) **ISSUANCE OF REGULATIONS.**—Not later than 120 days after the date of enactment of the Immigration Act of 2004, the Secretary of Homeland Security shall issue regulations to implement this section.”

(b) **TABLE OF CONTENTS.**—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 245A the following:

“245B. Access to Earned Adjustment.”

#### SEC. 302. CORRECTION OF SOCIAL SECURITY RECORDS.

Section 208(d)(1) of the Social Security Act (42 U.S.C. 408(d)(1)) is amended—

(1) in subparagraph (B), by striking “or” at the end of clause (ii);

(2) in subparagraph (C), by inserting “or” at the end;

(3) by inserting after subparagraph (C) the following:

“(D) whose status is adjusted to that of lawful permanent resident under section 245B of the Immigration and Nationality Act.”; and

(4) by striking “1990.” and inserting “1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred prior to the date on which the alien became lawfully admitted for temporary residence.

By Mr. HAGEL:

S. 2011. A bill to convert certain temporary Federal district judgeships to permanent judgeships, and for other purposes; to the Committee on the Judiciary.

Mr. HAGEL. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2011

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

**SECTION 1. CONVERSION OF TEMPORARY JUDGESHIPS TO PERMANENT JUDGESHIPS.**

(a) IN GENERAL.—The existing judgeships for the eastern district of California, the district of Hawaii, the district of Kansas, the eastern district of Missouri, and the district of Nebraska authorized by section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101-650, 104 Stat. 5089) as amended by Public Law 105-53, as of the date of enactment of this Act, shall be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall hold the office under section 133 of title 28, United States Code, as amended by this Act.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table contained in section 133(a) of title 28, United States Code, is amended by—

(1) striking the item relating to California and inserting the following:

“California:	
Northern .....	14
Eastern .....	7
Central .....	27
Southern .....	13”;

(2) striking the item relating to Hawaii and inserting the following:

“Hawaii .....	4”;
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(3) striking the item relating to Kansas and inserting the following:

“Kansas .....	6”;
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(4) striking the item relating to the eastern district of Missouri and inserting the following:

“Missouri:	
Eastern .....	7
Western .....	5
Eastern and Western .....	2”;

and

(5) striking the item relating to Nebraska and inserting the following:

“Nebraska .....	4”.
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By Mr. HATCH (for himself, Mr. LEAHY, Mr. DEWINE, and Mr. KOHL):

S. 2013. A bill to amend section 119 of title 17, United States Code, to extend satellite home viewer provisions; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise today to introduce with my friend and colleague from Vermont, Senator LEAHY, the Satellite Home Viewer Extension Act of 2004. We are pleased to be joined in this effort by Senators DEWINE and KOHL.

S. 2013 provides for a five-year extension of the statutory license for satellite carriers to make secondary transmissions of “distant” network and superstation television programs, which is set forth in section 119 of the Copyright Act.

The current section 119 license permits satellite carriers to provide subscribers that reside in unserved households with network programming from distant television markets. This sec-

tion is set to expire at the end of 2004. The extension of this statutory license for an additional five years would continue to serve the many interests that the section 119 license seeks to advance. Most importantly, it assures that television viewers incapable of receiving local network stations off the air retain access to network programming via satellite. This is particularly important for viewers who live in rural areas and may be unserved by either local stations or cable carriers. Indeed, many of my constituents in Utah depend on satellite systems for their television reception. This statutory license also enables the satellite home delivery industry to effectively compete with cable companies, which have long enjoyed a statutory license of their own.

The limited extension also recognizes, however, that satellite carriers are still in the process of making local signals available to their subscribers, an important development for viewers and local broadcasters, as well as for the satellite carriers themselves. The Satellite Home Viewer Improvement Act of 1999, which I was proud to help draft, authorized for the first time the retransmission of local signals to satellite subscribers residing in those local markets. The roll-out of “local-into-local” service by satellite carriers continues at a substantial rate, giving subscribers more choices than ever and further strengthening the competition between cable and satellite carriers. In light of these continuing changes, an additional extension of the Section 119 license is warranted pending further developments in this area.

I recognize that there are likely to be other issues relating to the section 119 license that warrant consideration in connection with this reauthorization. I look forward to working with my colleagues and hearing from the interested parties on those matters in the coming months.

Mr. LEAHY. Mr. President, today I am pleased to join Senator HATCH, as well as Senators KOHL and DEWINE, in sponsoring the Satellite Home Viewer Extension Act. The Satellite Home Viewer Improvement Act, which we passed in 1999, established a statutory license for satellite carriers to make secondary transmission of “distant” network and superstation television programs. That license will expire this year, however, so today’s bill will extend that license, found in section 119 of the Copyright Act, for 5 years in order to ensure that the laudable goals of the initial bill are fully realized.

The Satellite Home Viewer Improvement Act was the result of much work in the Senate Judiciary Committee, and it enjoyed strong bipartisan support in both Houses of Congress. The license created in section 119 serves a very worthwhile purpose: it permits households that cannot receive local network programming over-the-air to receive those shows by satellite. For the many viewers who are not served

by local networks or cable companies—which is the case for a great many people in the rural areas of my home State of Vermont—this is absolutely critical. Of special importance is the fact that the Satellite Home Viewer Improvement Act permits the satellite transmission of “local-into-local” programming, so that satellite companies can retransmit local broadcast signals to subscribers who actually live in the local market, but cannot receive the broadcast signal. Providing the news and local interest programming that is so vital to the creation and maintenance of a healthy and involved community has been the most gratifying result of the passage of that act. Furthermore, this license enhances competition by placing providers of satellite television programming on an equal footing with cable operators, which enjoy the benefits of their own statutory licenses.

Such important progress does take time, however, and the satellite carriers have not yet made these local signals available to all their subscribers. Although the provision of “local-into-local” programming is proceeding well, and although competition between cable and satellite companies has been strengthened, there is still more to be done before the goal of the Satellite Home Viewer Improvement Act is fully realized. If we fail to reauthorize the section 119 license, satellite programming may be unavailable as a real choice for many households, and many rural viewers will have little or no programming at all.

I look forward to working again with my colleagues on this important issue and to a speedy reauthorization of this important license.

By Ms. CANTWELL (for herself, Mrs. CLINTON, Mr. JEFFORDS, and Mr. FEINGOLD):

S. 2014. A bill to amend the Federal Power Act to establish reliability standards; to the Committee on Energy and Natural Resources.

By Ms. CANTWELL (for herself, Mr. FEINGOLD, and Mr. JEFFORDS):

S. 2015. A bill to prohibit energy market manipulation; to the Committee on Energy and Natural Resources.

Ms. CANTWELL. Mr. President, I rise today to introduce 2 pieces of electricity legislation—simple, common-sense bills that enjoy the bipartisan support of a majority of United States Senators.

First, I am pleased to introduce with my colleagues Senators CLINTON, JEFFORDS and FEINGOLD the Electric Reliability Act of 2004. This legislation would give the Federal Energy Regulatory Commission (FERC) authority to devise a system of mandatory and enforceable standards for the reliable operation of our nation’s electricity grid.

My distinguished friends from Wisconsin and Vermont, Senators FEINGOLD and JEFFORDS, and I are also

today introducing a second bill: the Electricity Needs Rules and Oversight Now (ENRON) Act, which would put in place a blanket ban on manipulative practices in our nation's electricity markets.

Enactment of these bills is long overdue. And in both cases, their provisions have passed the United States Senate within the past eight months. They represent crucial steps forward in the effort to modernize our nation's electricity grid and reform the rules by which it is operated.

Quite simply, these provisions are too important to be held captive to the majority's effort to pass H.R. 6—the energy bill conference report. Resembling a patchwork quilt of special interest hand-outs—rather than a policy that would help this nation achieve energy independence—H.R. 6 capsized under its own pork-laden weight on this very floor, a mere two months ago.

Rather than holding good energy policy hostage for the bad—as those who seek to resurrect that 1,700-page legislative monstrosity have said they intend—I believe this body can and must make necessary progress in upgrading our electricity grid and protecting our nation's consumers. That's what the two bills I'm introducing today are intended to do.

As surely my colleagues recall, much of the Northeast and Midwest last August suffered a massive power outage, affecting 50 million consumers from New York to Michigan. Clearly, the biggest blackout in our nation's history has underscored the need for mandatory and enforceable reliability standards—as envisioned in the Electric Reliability Act of 2004. To date, the system has operated under a set of voluntary guidelines, with no concrete penalties for those who break the rules and jeopardize the reliable energy service that is the foundation of our nation's economy.

While the August 2003 blackout was certainly a potent reminder, the call for reliability legislation dates back at least another five years. In 1997, both a Task Force established by the Clinton Administration's Department of Energy and a blue ribbon panel formed by the North American Electric Reliability Council (NERC) determined that reliability rules for our nation's electric system had to be made mandatory and enforceable.

These conclusions resulted, in part, from an August 1996 blackout in the Western Interconnection, where the short-circuit of two overloaded transmission lines near Portland, Oregon, caused a sweeping outage that knocked out power for up to 16 hours in ten states. The blackout affected 7.5 million consumers from Idaho to California, resulting in the automatic shutdown of 15 large thermal nuclear generating plants in California and the southwest—compromising the West's energy supply for several days, even after power had mostly been restored to end-users.

As outlined in Economic Impacts of Infrastructure Failures, a 1997 report submitted to the President's Commission on Critical Infrastructure Protection, the blackout was estimated to exact between \$1 billion and \$4 billion in direct and indirect costs to utilities, industry and consumers. The report also detailed the risks the outage posed to public health and safety, including an exponential increase in traffic accidents, hospitals forced to rely on emergency back-up power generation, and the grounding of more than 2,000 airline passengers.

While it took time to develop consensus, the Senate recognized the human and economic stakes associated with the reliable operation of the electricity grid. Stand-alone legislation very similar to what I've introduced today passed this body in June 2000, when this chamber was under Republican control. And even as the majority has twice changed hands since then, the United States Senate has twice passed the very provisions included in the Electric Reliability Act of 2004 as part of comprehensive energy legislation—most recently, this past summer.

Likewise, the Senate has previously passed the provisions contained in the ENRON Act, which Senator FEINGOLD and I are introducing today. Offered under the agreement that last July cleared the way for Senate Leadership to replace the then-pending Republican energy bill with the 107th Congress' Daschle-Bingaman legislation, the ENRON Act was adopted as an amendment to the Senate's Fiscal Year 2004 Agriculture Appropriations bill, on a strong, bipartisan vote of 57–40.

The ENRON Act is simple in concept. In the face of overwhelming evidence that Enron and other unscrupulous energy companies brazenly manipulated western energy markets during the crisis of 2000–2001, it would amend the Federal Power Act to put in place a blanket ban on such activities.

It has been estimated that the western energy crisis cost the region's consumers and businesses \$35 billion in domestic economic product—in other words, a 1.5 percent decline in productivity and a total loss of 589,000 jobs. After experiencing a devastating blow that exacerbated the already-crippling national recession, consumers in my state—who continue to pay the price for the unethical gamesmanship of these companies—know that our economy simply cannot abide another Enron.

Thus, the ENRON Act is based on language included in the Securities Exchange Act—in existence since 1934. This bill would make it illegal for any company to “use or employ . . . any manipulative or deceptive device or contrivance” to circumvent FERC rules and regulations on market manipulation. Further, it would specify that electricity rates resulting from manipulative practices are simply not lawful. In other words, when companies are known to have gouged consumers—

in some cases, even admitting as much—those same consumers should not be stuck with the inflated energy bills that result.

As Congress and various Federal agencies have over the past few years sought to piece together the events that led to the western energy crisis—the most devastating energy market meltdown in our Nation's history—a number of agencies and officials have weighed in on the issue of market manipulation. In addition to simple common sense, their statements underscore the need for the ENRON Act. For example: FERC in March 2003 issued its Final Report on Price Manipulation in Western Markets. The voluminous FERC report found that: “Enron's corporate culture fostered a disregard for the American energy customer; the success of the company's trading strategies, while temporary, demonstrates the need for explicit prohibitions on harmful and fraudulent market behavior and for aggressive market monitoring and enforcement.” The General Accounting Office (GAO) in August 2003 issued a report entitled Additional Actions Would Help Ensure that FERC's Oversight and Enforcement Capability is Comprehensive and Systematic. Among GAO's observations: “The heads of [FERC's] market monitoring units told us they recognize the difficulty of defining just and reasonable prices. They also said that they believe FERC has made some progress in doing so. However, they generally believed that FERC had not yet gone far enough.” GAO further concluded that: “we recommend that the Chairman of FERC more clearly define [the Commissions] role in overseeing the Nation's energy markets by . . . explicitly [describing FERC's] activities relative to carrying out the agency's statutory requirements to ensure just and reasonable prices and to preventing market manipulation.” Republican FERC Commissioner Joe Kelliher wrote the following in a November 5 letter to me, just prior to his confirmation: “Markets subject to manipulation cannot operate properly and there is an urgent need to proscribe manipulation of electricity markets. You have correctly noted there is no express prohibition of market manipulation in the Federal Power Act and have proposed legislation to establish an express prohibition. This is a critical point. The Federal Energy Regulatory Commission only has the tools that Congress chooses to give it, and Congress has never given the Commission express authority to prohibit market manipulation. I believe the time has come for Congress to take that step.” In the same letter, Kelliher goes on to note that, “This is not to say that the Commission cannot take steps to prevent market manipulation under its existing legal authority . . . Since there would likely be legal challenges to any such effort to proscribe manipulative practices, it would be helpful for Congress to give the Commissioner clear

authority to prohibit market manipulation . . . I support the goals of your amendment" [to the Agriculture Appropriations bill, which contains the same provisions as the ENRON Act] "and believe it would go far towards effectively prohibiting manipulation of electricity markets."

Recent events have clearly demonstrated the need for both the Electric Reliability Act of 2004, as well as the ENRON Act. On the other hand, the case is far less compelling for many of the provisions found in the H.R. 6 conference report. It's not just unpersuasive to argue that a 21st Century energy policy must include: liability protections for manufacturers of the groundwater pollutant MTBE; the weakening of landmark environmental laws such as the Clean Air, Clean Water and Safe Drinking Water Acts; and billions of dollars worth of subsidies, most infamously, taxpayer-backed bonds for construction of an energy efficient mall including a Hooters restaurant, it's absurd.

When the Senate last July agreed to send a comprehensive energy bill to conference with the House, few anticipated that we would get back a grab-bag of corporate give-aways so bloated that editorial pages from every corner of this Nation, from Yakima to Pensacola; Texarkana to Honolulu, would call on this body to put H.R. 6 out of its misery. Nor did many of us believe that common-sense legislation such as the ENRON Act—with broad, bipartisan support in the Senate—would be so quickly jettisoned by the conference report's authors.

Make no mistake: many of us in this chamber emphatically believe that we need an energy policy that will liberate this country from its dangerous dependence on foreign sources of oil and position our businesses to compete in the emerging global market for clean energy technologies. But to paraphrase my distinguished colleague from Vermont, Senator JEFFORDS, who has been a great leader on these issues, this Nation needs an energy bill, but certainly not this energy bill.

So today, we are introducing the Electric Reliability Act of 2004 and the ENRON Act, because it's time for this body to put the public interest ahead of the special interests poised to profit so handsomely from the passage of the energy bill conference report. We should take up and pass these individual pieces of legislation, which would mark a substantial achievement in the effort to upgrade the reliability of our Nation's grid and insulate our economy from the disastrous impacts of latter-day Enrons.

In last night's State of the Union speech, President Bush observed that "consumers and businesses need reliable supplies of energy to make our economy run." I could not agree more. He also urged Congress to "pass legislation to modernize our electricity system, promote conservation, and make America less dependent on foreign

sources of energy." Nowhere in his address did President Bush mention tax breaks for Hooters; I did not hear him invoke rollback of environmental laws on behalf of polluters; nor did he cite the need to put in place protections for corporate looters such as Enron—all those provisions that have become the hallmark of the energy bill conference report.

So I ask my colleagues to recognize that we can make measurable progress this year on the objectives the President has outlined. But that will happen not by holding good energy policy hostage for bad energy policy, as the authors of H.R. 6 would have it. Rather, it will happen when we agree to set aside the H.R. 6 conference report and pass common-sense, consensus-based energy policy. And both the Electric Reliability and ENRON Acts fit this description.

I ask my colleagues to support these bills.

Mrs. CLINTON. Mr. President, I am pleased to join Senators CANTWELL, JEFFORDS and FEINGOLD in introducing legislation that would create mandatory, enforceable reliability standards for our electricity system.

Last week was the five month anniversary of the worst blackout in the history of New York, and, indeed, the history of America. Congress has yet to pass electricity reliability legislation that would help ensure the blackout never happens again. There is strong support for this legislation, which has passed the Senate twice before as part of the energy bill. But with the energy bill stalled, we simply cannot afford to wait any longer to move on reliability standards.

The blackout had a tremendous impact on New Yorkers and on the economy. Some experts put the costs to New York at more than \$1 billion dollars and the costs nationwide at more than \$6 billion.

In November, the Electric System Working Group of the United States-Canadian task force on the blackout released its draft report on the causes of the blackout. Among the report's findings was that the North American Electric Reliability Council's (NERC) voluntary reliability standards were violated at least six times during the series of events that led to the cascading blackout. This finding reinforced the need for swift enactment of mandatory, enforceable electricity reliability standards. We clearly need a system that provides real accountability for failure.

New Yorkers, and all Americans, are relying on Congress to help prevent another blackout. Congress needs to move swiftly on legislation in this area so that rules can be put in place before this summer. I urge my colleagues to support this important legislation.

Mr. JEFFORDS. Mr. President, I am pleased to be joining the Senator from Washington, Ms. CANTWELL, and the Senator from New York, Mrs. CLINTON, as an original cosponsor of legislation

to ensure the reliable delivery of electric power in the United States. This bill is similar to Title I of the S. 1754, the Electric Reliability Security Act of 2003, that I introduced last October in response to the Northeast blackout.

Last night, in his State of the Union, the President urged Congress to pass legislation to modernize our electricity system, promote conservation, and make America less dependent on foreign sources of energy. This bill, the Electric Reliability Act of 2004, addresses the President's request, and the Senate should pass it expeditiously. Our country needs the new, clear national rules of the road contained in this bill to ensure the reliable delivery of electric power.

As the people in the Northeast will not soon forget, in August 2003 nearly 50 million people were affected by a massive power outage. But this is not an isolated incident. On January 16, 2004, Gov. James Douglas urged Vermonters to save power to help avert rolling blackouts because of electricity problems in southern New England. Though there was likely enough power to meet my State's demand, but we are part of a regional grid system. This system, as we learned last year, needs to operate in a coordinated fashion or the region faces blackouts.

The Senator from New York, Mrs. CLINTON, whose State was so significantly affected during the Northeast blackouts, knows well the hardship long electricity outages cause. I am pleased that she and the Senator from Washington, Ms. CANTWELL, have joined in this effort. The Senator from Washington, Ms. CANTWELL, has been alerted to the need for reliability legislation well before last year, as her State suffered during the massive multi-state Western blackout of 1996.

Be it 1996, 2003 or last week, these events emphasize the vulnerability of the U.S. electricity grid to human error, mechanical failure, and weather-related outages. Congress needs to do all that is necessary to protect the grid from devastating interruptions in the future. Those who know this issue well, say that reliability legislation is essential. On the first day of this year, Michehl Gent, President and Chief Executive of the North American Electric Reliability Council, said in the New York Times that all of the actions taken by industry and oversight organizations to respond to the Northeast blackout do "not reduce the need for Federal legislation that would provide authority to impose and enforce mandatory reliability standards." He continues, "whether legislation is adopted on a stand-alone basis or as part of a comprehensive energy bill, passage is essential. If reliability legislation had been enacted when first proposed, I believe that the blackout would not have occurred."

Given that Congress has not passed grid reliability legislation, the Federal Energy Regulatory Commission decided during its December 17, 2003 open



meeting to have its staff develop an order over the next few weeks requiring utilities and other jurisdictional entities to report violations of voluntary reliability standards set by the North American Electric Reliability Council. The Commission also asked for comment on its legal authority under existing statutes to mandate compliance with those standards.

Why is Congress making FERC waste time trying to determine whether they have the legal authority to act to protect consumers and ensure electric reliability? We should simply make that statutory authority clear. Reliability legislation has passed the Senate twice, and this bill asks the Senate to act on those same provisions again. Congress should establish mandatory reliability standards and close other regulatory gaps left by state deregulation of the electricity sector. We should pass this bill now, and I pledge my support to the Senators from Washington and New York, Senators CANTWELL and CLINTON in doing so. Given the high costs of power outages to our country, we cannot afford to do otherwise. I invite my colleagues to join us in our efforts to advance energy security and reliability in the United States.

#### SUBMITTED RESOLUTIONS

##### SENATE RESOLUTION 285—RECOGNIZING 2004 AS THE ‘50TH ANNIVERSARY OF ROCK ‘N’ ROLL

Mr. FRIST submitted the following resolution; which was considered and agreed to:

S. RES. 285

Whereas Elvis Presley recorded “That’s All Right” at Sam Phillips’ Sun Records in Memphis, Tennessee, on July 5, 1954;

Whereas Elvis’ recording of “That’s All Right”, with Bill Black on bass and Scotty Moore on guitar, paved the way for such subsequent Sun Studio hits as Carl Perkins’ “Blue Suede Shoes” (1955), Roy Orbison’s “Ooby Dooby” (1956), and Jerry Lee Lewis’ “Whole Lotta Shakin” (1957)—catapulting Sun Studio to the forefront of a musical revolution;

Whereas the recording in Memphis of the first rock ‘n’ roll song came to define an era and forever change popular music;

Whereas the birth of rock ‘n’ roll was the convergence of the diverse cultures and musical styles of the United States, blending the blues with country, gospel, jazz, and soul music;

Whereas the year 2004 provides an appropriate opportunity for our nation to celebrate the birth of rock ‘n’ roll, and the many streams of music that converged in Memphis to create a truly American sound known throughout the world: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes 2004 as the 50th Anniversary of rock ‘n’ roll;

(2) commemorates Sun Studio for recording the first rock ‘n’ roll record, “That’s All Right”; and

(3) expresses appreciation to Memphis for its contributions to America’s music heritage.

##### SENATE RESOLUTION 286—TO AUTHORIZE LEGAL REPRESENTATION IN UNITED STATES OF AMERICA V. PARVIS KARIM-PANAHI

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 286

Whereas, in the case of United States of America v. Parviz Karim-Panahi, Crim. No. M-8374-03, pending in the Superior Court of the District of Columbia, the defendant has attempted to serve subpoenas for testimony and documents upon Senators Daniel K. Akaka, Wayne Allard, Evan Bayh, Joseph R. Biden, Robert C. Byrd, Hillary Rodham Clinton, Susan M. Collins, Mark Dayton, Elizabeth Dole, John Ensign, Lindsey O. Graham, James M. Inhofe, Edward M. Kennedy, Carl Levin, Richard G. Lugar, John McCain, Bill Nelson, E. Benjamin Nelson, Mark Pryor, Jack Reed, Pat Roberts, Jeff Sessions, James M. Talent, and John W. Warner, and on Senate employees Judith A. Ansley, Staff Director of the Committee on Armed Services, Scott W. Stucky, General Counsel to the Committee on Armed Services, June M. Borawski, Printing and Document Clerk of the Committee on Armed Services, Paul F. Clayman, Chief Counsel of the Committee on Foreign Relations, and Susan Oursler, Chief Clerk of the Committee on Foreign Relations; and,

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(a)(2), the Senate may direct its counsel to represent Members, officers, and employees of the Senate with respect to any subpoena, order, or request for testimony or documents relating to their official responsibilities: Now, therefore, be it

*Resolved*, That the Senate Legal Counsel is authorized to represent the above-listed Senators and Senate employees who are the subject of subpoenas and any other Member, officer, or employee who may be subpoenaed in this case.

##### SENATE RESOLUTION 287—COMMENDING THE SOUTHERN UNIVERSITY AND A&M COLLEGE OF BATON ROUGE JAGUARS FOR BEING THE SHERIDAN BROADCASTING NATIONAL BLACK COLLEGE CHAMPIONS, THE AMERICAN SPORTS WIRE NATIONAL BLACK COLLEGE CHAMPIONS, AND THE MBC/BCSP NATIONAL BLACK COLLEGE CHAMPIONS

Ms. LANDRIEU (for herself and Mr. BREAUX) submitted the following resolution; which was considered and agreed to

S. RES. 287

Whereas the Jaguars, the football team of the Southern University and A&M College of Baton Rouge, finished the 2003 season with 12 wins and was voted number 1 in the final Sheridan Broadcasting National Black College Football Poll for the second time under Head Coach Pete Richardson;

Whereas the Jaguars won the Southwestern Athletic Conference Championship, defeating Alabama State by a score of 20-9 at Legion Field in Birmingham, Alabama on December 13, 2003;

Whereas the Jaguars won the Southwestern Athletic Conference Western Division Championship, defeating Grambling State University by a score of 44-41 in the

30th Annual Bayou Classic in the Louisiana Superdome on November 29, 2003;

Whereas 4 Jaguar players were selected to the Sheridan Broadcasting National Black College All-American Team: Quincy Richard, Arnold Sims, Miniya Smith, and Lenny Williams;

Whereas Jaguar quarterback Quincy Richard was named the Sheridan Broadcasting National / Doug Williams Offensive Player of the Year and finished with 3,270 yards passing and 31 touchdowns;

Whereas the Jaguar Head Coach Pete Richardson was named Sheridan Broadcasting National Sports Coach of the Year; and

Whereas the Jaguars accounted for 5,486 total yards on offense and 63 touchdowns: Now, therefore, be it

*Resolved*, That the Senate—

(1) commends the Jaguars for winning the Sheridan Broadcasting National Black College Championship;

(2) recognizes the achievements of all of the players, coaches, and support staff who were instrumental in helping the Jaguars during the 2003 season and invites them to the United States Capitol Building to be honored; and

(3) directs the Secretary of the Senate to make available enrolled copies of this resolution to the Southern University and A&M College of Baton Rouge for appropriate display and to transmit an enrolled copy of the resolution to each coach and member of the 2003 Jaguars.

##### SENATE RESOLUTION 288—COMMENDING THE LOUISIANA STATE UNIVERSITY TIGERS FOOTBALL TEAM FOR WINNING THE 2003 BOWL CHAMPIONSHIP SERIES NATIONAL CHAMPIONSHIP GAME

Mr. BREAUX (for himself and Ms. LANDRIEU) submitted the following resolution; which was considered and agreed to:

S. RES. 288

Whereas the Louisiana State University Tigers football team won the 2003 Bowl Championship Series national championship game, defeating Oklahoma University by a score of 21 to 14 in the Nokia Sugar Bowl at the Louisiana Superdome in New Orleans, Louisiana on January 4, 2004;

Whereas the Louisiana State University football team won the Southeastern Conference Championship, defeating the University of Georgia by a score of 34 to 13 in the Southeastern Conference championship game at the Georgia Dome in Atlanta, Georgia on December 6, 2003;

Whereas the Louisiana State University football team won 13 games during the 2003 season, more games than in any other season in school history;

Whereas the Louisiana State University football team won 5 games against nationally ranked opponents;

Whereas the Louisiana State University football team set 8 school records;

Whereas the Louisiana State University football team led the Nation in total defense, allowing only 252 yards per game, and scoring defense, allowing only 1 team to score more than 20 points in any game during the season;

Whereas Louisiana State University football head coach Nick Saban was named the National Coach of the Year by the Associated Press and the Football Writers Association of America;

Whereas 4 players—Chad Lavalais, Corey Webster, Skyler Green, and Stephen Peterman—were named first-team All-Americans;

Whereas offensive tackle Rodney Reed was named a National Scholar-Athlete by the National Football Foundation and was named first-team Academic All-American;

Whereas quarterback Matt Mauck threw 28 touchdown passes during the 2003 season, a Louisiana State University single season record, and was named second-team Academic All-American; and

Whereas running back Justin Vincent was named most valuable player of the Southeastern Conference championship game and the Nokia Sugar Bowl; Now, therefore, be it

*Resolved*, That the Senate—

(1) commends the Louisiana State University Tigers football team for winning the 2003 Bowl Championship Series national championship game;

(2) recognizes the achievements of all the players, coaches, and support staff who were instrumental in helping Louisiana State University during the 2003 season; and

(3) directs the Secretary of the Senate to make available enrolled copies of this resolution to Louisiana State University for appropriate display and to transmit an enrolled copy of the resolution to each coach and member of the 2003 Louisiana State University football team.

## NOTICES OF HEARINGS/MEETINGS

### COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. COCHRAN. Mr. President, I announce that the Committee on Agriculture, Nutrition, and Forestry will conduct a hearing on January 27, 2004, in SD-106, at 9:30 a.m. The purpose of this hearing will be to examine the current situation regarding the discovery of a case of bovine spongiform encephalopathy in a dairy cow in Washington State as it relates to food safety, livestock marketing, and international trade.

## AUTHORITY FOR COMMITTEES TO MEET

### COMMITTEE ON FOREIGN RELATIONS

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, January 21, 2003, at 9 a.m., to hold a hearing on North Korea.

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

## AUTHORIZING LEGAL REPRESENTATION

Mr. MCCONNELL. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 286 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 286) to authorize legal representation in the United States of America v. Parviz Karim-Panahi.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Madam President, this resolution concerns representation by

the Senate legal counsel of twenty-two members and three employees of the Committee on Armed Services and the chairman and ranking member and two employees of the Committee on Foreign Relations, who have been subpoenaed to provide testimony and produce documents in a criminal trial by a defendant charged with disrupting proceedings at a hearing of the Senate Committee on Armed Services in September 2003. These subpoenas, which were issued by the defendant on his own behalf, are not well taken. As the testimony and documents sought by these subpoenas are either irrelevant or cumulative of the testimony and evidence that will be offered at trial from other sources, evidence from these Senators and Senate employees is unnecessary. Moreover, the testimony and documents sought by the subpoenas as privileged under the Speech or Debate Clause of the Constitution.

This resolution would authorize the Senate Legal Counsel to represent the Senators and staff who have been subpoenaed by the defendant, as well as any other Members, officers, or employees who may be subpoenaed, in order to quash the subpoenas and protect the privileges of the Senate.

Mr. MCCONNELL. Madam President, 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 any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 286) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

### S. RES. 286

Whereas, in the case of United States of America v. Parviz Karim-Panahi, Crim. No. M-8374-03, pending in the Superior Court of the District of Columbia, the defendant has attempted to serve subpoenas for testimony and documents upon Senators Daniel K. Akaka, Wayne Allard, Evan Bayh, Joseph R. Biden, Robert C. Byrd, Hillary Rodham Clinton, Susan M. Collins, Mark Dayton, Elizabeth Dole, John Ensign, Lindsey O. Graham, James M. Inhofe, Edward M. Kennedy, Carl Levin, Richard G. Lugar, John McCain, Bill Nelson, E. Benjamin Nelson, Mark Pryor, Jack Reed, Pat Roberts, Jeff Sessions, James M. Talent, and John W. Warner, and on Senate employees Judith A. Ansley, Staff Director of the Committee on Armed Services, Scott W. Stucky, General Counsel to the Committee on Armed Services, June M. Borawski, Printing and Document Clerk of the Committee on Armed Services, Paul F. Clayman, Chief Counsel of the Committee on Foreign Relations, and Susan Oursler, Chief Clerk of the Committee on Foreign Relations; and,

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(a) and 288c(a)(2), the Senate may direct its counsel to represent Members, officers, and employees of the Senate with respect to any subpoena, order, or request for testimony or documents relating to their official responsibilities: Now, therefore, be it

*Resolved*, That the Senate Legal Counsel is authorized to represent the above-listed Senators and Senate employees who are the subject of subpoenas and any other Member, officer, or employee who may be subpoenaed in this case.

## COMMENDING SOUTHERN UNIVERSITY AND A&M COLLEGE OF BATON ROUGE JAGUARS

Mr. MCCONNELL. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 287 introduced earlier today by Senators LANDRIEU and BREAU.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 287) commending the Southern University and A&M College of Baton Rouge Jaguars for being the Sheridan Broadcasting National Black College Champions, the American Sports Wire National Black College Champions, and the MBC/BCSP National Black College Champions.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. Madam President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 287) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

### S. RES. 287

Whereas the Jaguars, the football team of the Southern University and A&M College of Baton Rouge, finished the 2003 season with 12 wins and was voted number 1 in the final Sheridan Broadcasting National Black College Football Poll for the second time under Head Coach Pete Richardson;

Whereas the Jaguars won the Southwestern Athletic Conference Championship, defeating Alabama State by a score of 20-9 at Legion Field in Birmingham, Alabama on December 13, 2003;

Whereas the Jaguars won the Southwestern Athletic Conference Western Division Championship, defeating Grambling State University by a score of 44-41 in the 30th Annual Bayou Classic in the Louisiana Superdome on November 29, 2003;

Whereas 4 Jaguar players were selected to the Sheridan Broadcasting National Black College All-American Team: Quincy Richard, Arnold Sims, Miniya Smith, and Lenny Williams;

Whereas Jaguar quarterback Quincy Richard was named the Sheridan Broadcasting National / Doug Williams Offensive Player of the Year and finished with 3,270 yards passing and 31 touchdowns;

Whereas the Jaguar Head Coach Pete Richardson was named Sheridan Broadcasting National Sports Coach of the Year; and

Whereas the Jaguars accounted for 5,486 total yards on offense and 63 touchdowns: Now, therefore, be it

*Resolved*, That the Senate—

(1) commends the Jaguars for winning the Sheridan Broadcasting National Black College Championship;

(2) recognizes the achievements of all of the players, coaches, and support staff who were instrumental in helping the Jaguars during the 2003 season and invites them to the United States Capitol Building to be honored; and

(3) directs the Secretary of the Senate to make available enrolled copies of this resolution to the Southern University and A&M College of Baton Rouge for appropriate display and to transmit an enrolled copy of the resolution to each coach and member of the 2003 Jaguars.

Mr. REID. Madam President, I wanted to say, while my counterpart is on the floor, that we in the minority have appreciated the way Senators McCONNELL and FRIST have handled legislation that has been on the floor. We don't agree as to what comes to the floor a lot of times, but the majority, with rare exception, has given us the opportunity, when a matter is brought up, to talk about it, offer amendments, and then give us reasonable time to determine if in fact cloture needs to be invoked on a bill. We appreciate that.

In the rush of things this year, we are going to go out of session on July 26 until the fall. We are going to be in a position of wanting to do things more quickly than we would ordinarily. I hope the majority will stick with what happened last year. I think it worked out well. I think our people felt that we were treated fairly, with some exceptions. There is going to be a tendency to push things more quickly this year and it will make things go even more slowly. In short, we have a lot of work to do. By following the Senate rules, I think we will get more done than not following the rules.

Mr. McCONNELL. Madam President, let me say to the assistant Democratic leader that I thank him for his kind observations. I think he is absolutely correct. We have a very limited number of days this year upon which to accomplish anything. It is going to require a high level of bipartisan cooperation to advance measures that are essential to the country, which we all, for the most part, agree on—not to mention items that may be more contentious. I thank my friend.

#### COMMENDING THE LOUISIANA STATE UNIVERSITY FOOTBALL TEAM

Mr. McCONNELL. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 288, a resolution submitted earlier today by Senator BREAUX.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 288) commending the Louisiana State University Tigers football team for winning the 2003 Bowl Championship Series national championship game.

There being no objection, the Senate proceeded to consider the resolution.

Mr. McCONNELL. Madam President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the matter be printed in the RECORD.

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

The resolution (S. Res. 288) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

#### S. RES. 288

Whereas the Louisiana State University Tigers football team won the 2003 Bowl Championship Series national championship game, defeating Oklahoma University by a score of 21 to 14 in the Nokia Sugar Bowl at the Louisiana Superdome in New Orleans, Louisiana on January 4, 2004;

Whereas the Louisiana State University football team won the Southeastern Conference Championship, defeating the University of Georgia by a score of 34 to 13 in the Southeastern Conference championship game at the Georgia Dome in Atlanta, Georgia on December 6, 2003;

Whereas the Louisiana State University football team won 13 games during the 2003 season, more games than in any other season in school history;

Whereas the Louisiana State University football team won 5 games against nationally ranked opponents;

Whereas the Louisiana State University football team set 8 school records;

Whereas the Louisiana State University football team led the Nation in total defense, allowing only 252 yards per game, and scoring defense, allowing only 1 team to score more than 20 points in any game during the season;

Whereas Louisiana State University football head coach Nick Saban was named the National Coach of the Year by the Associated Press and the Football Writers Association of America;

Whereas 4 players—Chad Lavalais, Corey Webster, Skyler Green, and Stephen Peterman—were named first-team All-Americans;

Whereas offensive tackle Rodney Reed was named a National Scholar-Athlete by the National Football Foundation and was named first-team Academic All-American;

Whereas quarterback Matt Mauck threw 28 touchdown passes during the 2003 season, a Louisiana State University single season record, and was named second-team Academic All-American; and

Whereas running back Justin Vincent was named most valuable player of the Southeastern Conference championship game and the Nokia Sugar Bowl: Now, therefore, be it Resolved, That the Senate—

(1) commends the Louisiana State University Tigers football team for winning the 2003 Bowl Championship Series national championship game;

(2) recognizes the achievements of all the players, coaches, and support staff who were instrumental in helping Louisiana State University during the 2003 season; and

(3) directs the Secretary of the Senate to make available enrolled copies of this resolution to Louisiana State University for appropriate display and to transmit an enrolled copy of the resolution to each coach and member of the 2003 Louisiana State University football team.

Mr. McCONNELL. Madam President, for those of us who watched the game,

LSU did indeed have an outstanding performance on that day. I know they are somewhat frustrated because they had to share the national title with USC, but it was a great day for the LSU Tigers by any count.

#### CONGRATULATING THE EAST BOYNTON BEACH, FLORIDA, LITTLE LEAGUE TEAM AS THE 2003 U.S. LITTLE LEAGUE CHAMPIONS

Mr. McCONNELL. Madam President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H. Con. Res. 273, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 273) recognizing and congratulating the East Boynton Beach, Florida, Little League team as the 2003 United States Little League Champions.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. McCONNELL. Madam President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the measure be printed in the RECORD.

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

The resolution (H. Con. Res. 273) was agreed to.

The preamble was agreed to.

#### MEASURE PLACED ON THE CALENDAR—S. 2006

Mr. McCONNELL. Madam President, I understand there is a bill at the desk that is due for its second reading.

The PRESIDING OFFICER. The bill will be read for the second time.

The assistant legislative clerk read as follows:

A bill (S. 2006) to extend and expand the Temporary Extended Unemployment Compensation Act of 2002, and for other purposes.

Mr. McCONNELL. Madam President, I object to further proceedings on the measure at this time.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the calendar.

#### REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 108-15

Mr. McCONNELL. Madam President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaty transmitted to the Senate on January 21, 2004, by the President: Additional Protocol Amending Investment Treaty with Bulgaria, Treaty

Document No. 108-15. I further ask unanimous consent that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The message of the President reads as follows:

**ADDITIONAL PROTOCOL AMENDING INVESTMENT TREATY WITH BULGARIA (TREATY DOC. 108-15)**

*To the Senate of the United States:*

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Additional Protocol Between the United States of America and the Republic of Bulgaria amending the Treaty Between the United States of America and the Republic of Bulgaria Concerning the Encouragement and Reciprocal Protection of Investment of September 23, 1992, signed at Brussels on September 22, 2003. I transmit also, for the information of the Senate, the report of the Department of State with respect to this Additional Protocol.

My Administration has already forwarded to the Senate a similar Additional Protocol for Romania and expects to forward to the Senate shortly Additional Protocols for the Czech Republic, Estonia, Latvia, Lithuania, Poland, and the Slovak Republic. Each of these Additional Protocols is the result of an understanding the United States reached with the European Commission and six countries that will join the European Union (EU) on May 1, 2004 (the Czech Republic, Estonia, Latvia, Lithuania, Poland, and the Slovak Republic), as well as with Bulgaria and Romania, which are expected to join the EU in 2007.

The understanding is designed to preserve U.S. bilateral investment treaties (BITs) with each of these countries after their accession to the EU by establishing a framework acceptable to the European Commission for avoiding or remedying present and possible future incompatibilities between their BIT obligations and their future obligations of EU membership. It expresses the U.S. intent to amend the U.S. BITS, including the BIT with Bulgaria, in order to eliminate incompatibilities between certain BIT obligations and EU law. It also establishes a framework for addressing any future incompatibilities that may arise as European Union authority in the area of investment expands in the future, and endorses the principle of protecting existing U.S. investments from any future EU measures that may restrict foreign investment in the EU.

The United States has long championed the benefits of an open investment climate, both at home and abroad. It is the policy of the United States to welcome market-driven for-

eign investment and to permit capital to flow freely to seek its highest return. This Additional Protocol preserves the U.S. BIT with Bulgaria, with which the United States has an expanding relationship, and the protections it affords U.S. investors even after Bulgaria joins the EU. Without it, the European Commission would likely require Bulgaria to terminate its U.S. BIT upon accession because of existing and possible future incompatibilities between our current BIT and EU law.

I recommend that the Senate consider this Additional Protocol as soon as possible, and give its advice and consent to ratification at an early date.

GEORGE W. BUSH.  
THE WHITE HOUSE, January 21, 2004.

**ORDERS FOR THURSDAY,  
JANUARY 22, 2004**

Mr. MCCONNELL. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. tomorrow, Thursday, January 22. I further ask unanimous consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then resume debate on the conference report to accompany H.R. 2673, the Omnibus appropriations measure, as provided under the previous order.

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

The Senator from Nevada.

Mr. REID. Madam President, we have a little mathematical problem we need to straighten out.

Mr. MCCONNELL. Madam President, I ask unanimous consent to modify the previous agreement to allow for 4½ hours of debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. No objection. We told all our Members the vote will be at 2 o'clock.

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

Mr. MCCONNELL. Some of us are troubled when it comes to math around here, Madam President. We are pleased to have the correction noted.

**PROGRAM**

Mr. MCCONNELL. Madam President, for the information of all of our colleagues, tomorrow morning the Senate will resume debate on the conference report to accompany H.R. 2673, the Omnibus appropriations measure. Under the order, there will be 4½ hours for debate prior to the second cloture vote. I join with the majority leader in hoping cloture will be invoked tomorrow and that the Senate can then conclude action on this vital funding measure. Senators should, therefore, expect votes tomorrow afternoon, and all Members will be notified when those votes are scheduled.

I see the chairman of the Appropriations Committee sitting over there with a smile on his face at the prospect of completing our work for the current fiscal year.

**ADJOURNMENT UNTIL 9:30 A.M.  
TOMORROW**

Mr. MCCONNELL. Madam President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 5:37 p.m., adjourned until Thursday, January 22, 2004, at 9:30 a.m.

**NOMINATIONS**

Executive nominations received by the Senate January 21, 2004:

**CORPORATION FOR PUBLIC BROADCASTING**

CLAUDIA PUIG, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR PUBLIC BROADCASTING FOR A TERM EXPIRING JANUARY 31, 2008, VICE WINTER D. HORTON, JR., TERM EXPIRED, TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

GAY HART GAINES, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR PUBLIC BROADCASTING FOR A TERM EXPIRING JANUARY 31, 2004, VICE RITAJEAN HARTUNG BUTTERWORTH, RESIGNED, TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

**ENVIRONMENTAL PROTECTION AGENCY**

STEPHEN L. JOHNSON, OF MARYLAND, TO BE DEPUTY ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE LINDA J. FISHER, RESIGNED.

CHARLES JOHNSON, OF UTAH, TO BE CHIEF FINANCIAL OFFICER, ENVIRONMENTAL PROTECTION AGENCY, VICE LINDA MORRISON COMBS.

**SOCIAL SECURITY ADMINISTRATION**

BRADLEY D. BELT, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE SOCIAL SECURITY ADVISORY BOARD FOR A TERM EXPIRING SEPTEMBER 30, 2008, VICE STANFORD G. ROSS, TERM EXPIRED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

**BROADCASTING BOARD OF GOVERNORS**

FAYZA VERONIQUE BOULAD RODMAN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BROADCASTING BOARD OF GOVERNORS FOR A TERM EXPIRING AUGUST 13, 2006, VICE ROBERT M. LEDBETTER, JR., TERM EXPIRED, TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

**UNITED STATES POSTAL SERVICE**

ALBERT CASEY, OF TEXAS, TO BE A GOVERNOR OF THE UNITED STATES POSTAL SERVICE FOR A TERM EXPIRING DECEMBER 8, 2009, VICE TIRSO DEL JUNCO, TERM EXPIRED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

**DEPARTMENT OF HOMELAND SECURITY**

CLARK KENT ERVIN, OF TEXAS, TO BE INSPECTOR GENERAL, DEPARTMENT OF HOMELAND SECURITY (NEW POSITION), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

**CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

CYNTHIA BOICH, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM EXPIRING OCTOBER 6, 2007, VICE THOMAS EHRLICH, TERM EXPIRED, TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

DOROTHY A. JOHNSON, OF MICHIGAN, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM EXPIRING OCTOBER 6, 2007 (REAPPOINTMENT), TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

HENRY LOZANO, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM EXPIRING OCTOBER 6, 2008, VICE CHRISTOPHER C. GALLAGHER, TERM EXPIRED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

**NATIONAL COUNCIL ON THE ARTS**

GERARD SCHWARZ, OF WASHINGTON, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE ARTS FOR THE REMAINDER OF THE TERM EXPIRING SEPTEMBER 3, 2006, VICE EARL A. POWELL III, RESIGNED.

**NATIONAL LABOR RELATIONS BOARD**

RONALD E. MEISBURG, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL RELATIONS BOARD FOR THE TERM OF

FIVE YEARS EXPIRING AUGUST 27, 2008, VICE RENE ACOSTA, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

#### DEPARTMENT OF EDUCATION

ROBERT LERNER, OF MARYLAND, TO BE COMMISSIONER OF EDUCATION STATISTICS FOR A TERM EXPIRING JUNE 21, 2009, VICE PASCAL D. FORGIONE, JR., TERM EXPIRED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

RAYMOND SIMON, OF ARKANSAS, TO BE ASSISTANT SECRETARY FOR ELEMENTARY AND SECONDARY EDUCATION, VICE SUSAN B. NEUMAN, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

#### IN THE AIR FORCE

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

#### *To be brigadier general*

COL. GEORGE T. LYNN, 0000

#### IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

#### *To be major general*

BRIG. GEN. CONRAD W. PONDER JR., 0000

#### *To be brigadier general*

COL. GEORGE J. SMITH, 0000

#### IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

#### *To be major general*

BRIG. GEN. DOUGLAS V. O'DELL JR., 0000

#### IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

#### *To be vice admiral*

REAR ADM.(SELECTEE) ALBERT M. CALLAND III, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

#### *To be vice admiral*

REAR ADM. JAMES D. MCARTHUR JR., 0000

#### IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS AND FOR REGULAR APPOINTMENT UNDER TITLE 10, U.S.C., SECTION 624, 531, AND 3064.

#### *To be colonel*

MARGOT KRAUSS, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

#### *To be colonel*

MARK S. ACKERMAN, 0000  
LISA ANDERSONLLOYD, 0000  
LEO E. BOUCHER III, 0000  
NATHANAEL P. CAUSEY, 0000  
JOHN L. CLIFTON IV, 0000  
ALAN L. COOK, 0000  
PETER M. CULLEN, 0000  
WILLIAM R. GADE, 0000  
CHRISTOPHER M. GARCIA, 0000  
SUSAN S. GIBSON, 0000  
GREGORY A. GROSS, 0000  
SCOTT L. KILGORE, 0000  
DENISE R. LIND, 0000  
SCOTT E. LIND, 0000  
JACQUELINE R. LITTLE, 0000  
KEVIN J. LUSTER, 0000  
REYNOLD P. MASTERTON, 0000  
ROBIN N. SWOPE, 0000  
KELLY D. WHEATON, 0000  
RICHARD M. WHITTAKER, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 624:

#### *To be lieutenant colonel*

TIMOTHY G. WRIGHT, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS AND FOR REGULAR APPOINTMENT UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

#### *To be lieutenant colonel*

IDA F. AGAMY, 0000  
MELINDA A. COMFORT, 0000  
JONATHAN A. KENT, 0000  
GREGORY S. MATHERS, 0000  
MATTHEW A. MYERS SR., 0000  
KARY B. REED, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AND FOR REGULAR APPOINTMENT UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

#### *To be major*

DAVID J. KING JR., 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AND FOR REGULAR APPOINTMENT UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

#### *To be major*

MICHAEL G. GRAY, 0000  
PAUL M. SALTYSIAK, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SERVICE CORPS AND FOR REGULAR APPOINTMENT UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

#### *To be major*

TERRY R. MOREN, 0000  
CHRISTOPHER WODARZ, 0000

#### IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

#### *To be captain*

GERALD R. MANLEY, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

#### *To be commander*

TODD E. BAILEY, 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 commander*

JENNIFER R. FLATHER, 0000  
JANET G. GOLDSSTEIN, 0000  
KATHY E. GORDON, 0000  
MARIE E. OLIVER, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 531:

#### *To be commander*

WING LEONG, 0000  
LINDA P NIEMEYER, 0000  
PATRICK J VINCENT, 0000

#### *To be lieutenant commander*

KRISTINE E ALEXANDER, 0000  
RICHARD A BONNETTE, 0000  
MARK D BUTLER, 0000  
VIOLETA N CRUZ, 0000  
ROBERT J PITKIN, 0000  
ETHAN C GIBSON, 0000  
MICHAEL W GORE, 0000  
BRIAN J CHALEY, 0000  
ALAN M HANSEN, 0000  
STEPHEN E HAZZARD, 0000  
DWIGHT A HORN, 0000  
RAYMOND J HOUK, 0000  
ARNOLD S MCCOY, 0000  
DANIEL E MCKAY, 0000  
GABRIEL MENSAH, 0000  
VINSON W MILLER, 0000  
JAMES H PITTMAN, 0000  
ROBERT A REARICK, 0000  
JASON L RIGGS, 0000  
GREG T SCHLUTER, 0000  
JAMES D STAVRIDES, 0000  
ERIC R TIMMENS, 0000  
DONALD P TROAST, 0000  
CHARLES AP TURNER, 0000  
ANDREW A WADE, 0000  
AARON D WERBEL, 0000  
JIMMY WEST, 0000  
TIMOTHY R WHITE, 0000

## WITHDRAWAL

Executive message transmitted by the President to the Senate on January 21, 2004, withdrawing from further Senate consideration the following nomination:

MARK C. BRICKELL, OF NEW YORK, TO BE DIRECTOR OF THE OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR A TERM OF FIVE YEARS, WHICH WAS SENT TO THE SENATE ON JUNE 12, 2003.