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Senate

The Senate met at 2 p.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

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

Trust in the Lord with all your heart, and lean not on your own understanding; in all your ways acknowledge Him, and He shall direct your paths'' (Proverbs 3:5–6).

Let us pray: Gracious God, You only ask from us what You generously offer to give to us. You initiate this conversation we call prayer because You want to bless us with exactly what we will need to live faithful, confident, productive, joyous lives today. You are for us; not against us. Help us to live the hours of today knowing You are beside, are on our side, and offer us unlimited strength and courage besides. You will provide us insight and inspiration to confront and solve the problems we face. You will give us peace when our hearts are distressed by the turbulence of our times. You will comfort us when we are afraid and need Your peace. You make us overcomers when we feel overwhelmed. In response we relinquish our imagined control over people and circumstances. We thank You for the power of Your wisdom we feel surging into our minds and hearts. We trust in You, dear God, for You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable HARRY REID, a Senator from the State of Nevada, 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, today we will once again resume consideration of the nomination of Miguel Estrada to be a circuit judge for the DC Circuit. Senator HATCH will be here to continue to discuss the merits of this well-qualified nominee and our hope is for an up-or-down vote.

Under the order of last week, at 5 p.m. the Senate will proceed to the consideration of calendar No. 19, S. 3, the partial-birth abortion ban bill, with the time until 6 p.m. equally divided for debate. I understand that Senator MURRAY will be here to offer an amendment to that legislation, and thus I encourage Members who would like to debate that amendment to remain after the scheduled 6 p.m. vote this evening.

The rollcall vote will be on the nomination of Gregory Frost to be a U.S. District Judge for the Southern District of Ohio.

For the remainder of the week, we will continue consideration of the partial-birth abortion bill and should complete action of that bill this week.

In addition, on Tuesday, tomorrow, from 11 a.m. to 12:30 we will consider the Estrada nomination for the purpose of discussion regarding the Senate's constitutional role of advise and consent. I encourage all Members to be present to participate in this institutional debate.

Rollcall votes will occur each day this week as we attempt to complete the items mentioned.

I thank all Members.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, I want to direct a question through you to the majority leader. Tomorrow from 11 to 12:30, is that going to be equally divided?

Mr. FRIST. Mr. President, the intention is to be equally divided. I would like it to be back and forth, if we can do that.

Let me take this opportunity to say that the purpose is because we are all running around doing so many different things over the course of the day. I ask my Senate colleagues to pay attention to what I am about to say because the purpose is to bring as many people to the floor to listen and discuss and debate what the Constitution says and our interpretation of the Constitution at an elevated level. That is the purpose in setting aside that time from 11 to 12:30.

Time should be equally divided, and look for some outstanding discussion on what is a very important principle in our Constitution.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

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

The PRESIDING OFFICER. Under the previous order, the Senate will go into executive session and resume consideration of the executive calendar No. 21, which the clerk will report.

The assistant legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

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

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

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

Mr. HOLLINGS. Mr. President, with respect to the Estrada nomination, this Senator has no reason to vote to confirm and everyone should understand up front that I have treated my responsibility with serious purpose, always giving the benefit of the doubt to the President. I was one of the two Democrats who voted for Robert Bork, and I am particularly proud that I did vote for him. Robert Bork was an outstanding jurist. He answered the questions.

So when these folks come up and apply for a job, they ought to treat the advise and consent responsibility that we have as Senators with respect. They should not go to the committee and give the rope-a-dope runaround and then come back later and have the White House calling Senators saying: Would you like to see the gentleman?

I have heard the whining cry again and again that this is all unconstitutional. I wish they would have been present when Justice Fortas, the Associate Justice for the Supreme Court, was nominated by President Lyndon Johnson to become the Chief Justice. My senior colleague at the time, the distinguished Senator Thurmond, led the filibuster. There was extended debate, and please note it in the RECORD that they had a cloture vote. They could not get cloture and—read it in the RECORD—they then withdrew the nomination.

The leadership in the Senate should get on with the important business of this Government at a time of war, at a time of dreadful deficit spending, at a time when they will not even pay for the war. I can say now that every President, every Congress, has paid for wars, and I am embarrassed to be a Senator at this particular time to go home to my state and report that we are not going to pay for this war. It was Abraham Lincoln, in order to pay for the Civil War, who put a tax on dividends. And now this President says the need of the hour is to take the tax off dividends.

During World War I we had a marginal income tax rate that went up to 77 percent. In World War II, it was 79 percent to 94 percent. In the Korean War, it was 91 percent, and the country sustained. The country did not break up. The country did not go poor. The country was stimulated by a sense of responsibility. This Mickey Mouse idea that dividends are going to stimulate the economy—come on. In the Vietnam War, we had a marginal tax rate up to 77 percent. But we have the unmitigated gall to now say we need to stimulate the economy with a dividend tax cut, with doing away with the marriage penalty, and with eliminating the estate tax.

It is quite obvious what is on course is tax reform. There is no sense of responsibility for this position. It helped when, with Senator Muskie, we passed in 1973 and it was finally signed in 1974 the Budget Committee process. I have served on that Budget Committee for the past 25, 26 years, including as Chairman. I am the author, along with Senator Gramm and Senator Rudman, of Gramm-Rudman-Hollings when President Reagan said we were not going to have to run deficits anymore. We had truth in budgeting.

On Saturday, we got the truth from the Congressional Budget Office. It projected the pending deficit for the fiscal year which we are in now, 2003, on page 21, at the back of the document would be $469 billion. The distinguished Presiding Officer knows this by heart because he has served on the Budget Committee on the House side. This is important because that is the actual debt increase, that is the actual deficit.

I ask unanimous consent to have printed in the RECORD the lead editorial from today's Washington Post, ''Digging the Budget Hole.''

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

[From the Washington Post, Mar. 10, 2003]

DIGGING THE DEFICIT HOLE

The deficit numbers grow ever grimmer. The Congressional Budget Office on Friday put out a new estimate for this fiscal year in which the projected deficit is 24 percent higher than the CBO had anticipated two months ago, mostly owing to the faltering economy. Meanwhile, Congress this week will begin outlining a course for federal spending and tax cuts that would push the country further into a deficit hole. So it seems like an opportune moment to pause for a reminder of how we got into this mess, how bad it is and how bad it could be if President Bush's tax wishes come to pass.

First, what happened to the surplus? It was only two years ago that the CBO foresaw a surplus of $5.6 trillion through 2011. Back then, administration officials, insisting that Mr. Bush's $1.3 trillion tax cut was easily affordable, dismissed warnings that the surplus could be illusory. The forecasts could ''just as easily be wrong on the low side as the high side,'' said White House budget director Mitchell E. Daniels Jr. Now, even without new tax cuts, the surplus has evaporated and the administration is airbrushing its previous statements. ''We didn't squander a surplus. We never had it,'' Treasury Secretary John W. Snow told the House Budget Committee. ''It wasn't real dollars in hand.''

The biggest reason those dollars failed to materialize, particularly in the short term, is the faltering economy. But over 10 years, according to CBO projections, the major drag on the nation's fiscal health will be the cost of the 2001 tax cut and increased spending. A sobering report last week by the Committee for Economic Development (CED), a nonpartisan group of business leaders, spelled this out: ''In short, while a substantial portion of the current fiscal deterioration can be blamed on the economy, responsibility for the fiscal set-back in later years lies squarely on the shoulders of policymakers.''

Now build in the effect of Mr. Bush's $1.5 trillion in new tax proposals. The part that Congress will take up immediately, projected to cost $726 billion through 2013, includes the immediate implementation of the 2001 tax cuts, much of which was to have been phased in over time, and the elimination of the individual income tax on corporate dividends. But Mr. Bush also wants Congress to make his 2001 tax cuts permanent; currently they're scheduled to expire in 2010. In interest costs alone, the Bush proposals would impose an additional $530 billion. Overall, according to the new CBO figures, the administration's tax and spending proposals would cost $2.7 trillion. The bottom line, according to the CBO: cumulative deficits of $1.8 trillion through 2013 if Mr. Bush gets his way.

But the real fiscal picture is even worse. Remember the Social Security lockbox? It has been broken open. The deficit numbers above are cushioned by including $2.6 trillion from the Social Security trust fund. In other words, if that money were placed out of reach, the deficit would be $4.4 trillion through 2013. Moreover, those numbers don't reflect the cost of fixing the alternative minimum tax, which was designed to prevent the wealthy from wriggling out of taxes but is projected to apply to a third of all taxpayers by 2010. The administration has proposed a short-term fix; extending that fix through 2013 would cost $750 billion. Likewise, these figures don't take into account the likely increases in spending to cover an Iraq war and its aftermath, homeland security or a prescription drug benefit for seniors. Nor do they include the growing demands on Social Security and Medicare that will materialize when baby boomers start to reach retirement age just five years from now.

''The first step in climbing out of a hole is to stop digging,'' the CED report said. ''We cannot afford economic policy decisions today that further raise deficits tomorrow.'' Congress ought to put down that shovel.

Mr. HOLLINGS. Everyone can read the entire article, but let me read the sentence: ''The deficit numbers above are cushioned by including $2.6 trillion from the Social Security trust fund.'' I have to read that again: ''The deficit numbers above are cushioned by including $2.6 trillion from the Social Security trust fund.''

The following sentence: ''In other words, if that money were placed out of reach, the deficit would be $4.4 trillion through 2013.'' Now, that is just the Social Security trust fund. The Social Security trust fund is not the only one being expended. There is the Medicare trust fund. They take the surpluses, and they are going to say we have to do something on Medicare, but they have been spending the moneys on anything and everything other than Medicare. The same can be said with the highway trust funds, the airport trust funds, and the military and public service retirees. We have all kinds of trust funds, and if they were all included, rather than the $4.4 trillion, it would be $5.7 trillion.

This Enron-like accounting operation is right in the President's budget book. If you look at page 1—and I hold within my hand the budget for the fiscal year 2004 that was just released last month—it says: ''My administration firmly believes in controlling the deficit and reducing it as the economy strengthens and our national security interests are met. Compared to the overall Federal budget and the $10.5 trillion national economy, our budget cap is small by historical standards.''

That is on page 1. Now, Kenny Boy Lay, when he put out his Enron corporate report to the stockholders, that

is exactly the way he would start off. Make the stockholders feel good. Make the taxpayers feel good. Make the public servants feel responsible. But where is the truth? You will have to go all the way through to page 332.

I ask unanimous consent that page 332, by itself, be printed in the RECORD.

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

TABLE S–14.—FEDERAL GOVERNMENT FINANCING AND DEBT—Continued

[In billions of dollars]

Function	2002 actual	Estimates					
		2003	2004	2005	2006	2007	2008
Debt outstanding, end of year:							
Gross Federal debt[7]:							
Debt issued by Treasury	6,171	6,725	7,294	7,811	8,327	8,832	9,363
Debt issued by other agencies	27	27	27	26	26	26	25
Total, gross Federal debt	6,198	6,752	7,321	7,837	8,353	8,858	9,388
Held by:							
Debt held by Government accounts	2,658	2,874	3,155	3,451	3,751	4,061	4,385
Debt issued by the public[8]	3,540	3,878	4,166	4,387	4,603	4,797	5,003

[7] Treasury securities held by the public and zero-coupon bonds held by Government accounts are almost all measured at sales price plus amortized discount or less amortized premium. Agency debt securities are almost all measured at face value. Treasury securities in the Government account series are measured at face value less unrealized discount (if any).

[8] At the end of 2002, the Federal Reserve Banks held $604.2 billion of federal securities and the rest of the public held $2,936.2 billion. Debt held by the Federal Reserve Banks is not estimated for future years.

Mr. HOLLINGS. Mr. President, you will see the total gross Federal debt whereby it goes from $6.198 trillion at the end of last fiscal year to, as projected at the end of this fiscal year, $6.752 trillion, for a deficit of $554 billion. And they are running around here, in this newspaper, continuing to say $300 billion deficits. We already are projecting, without the cost of Iraq—this does not include the cost of going to war in Iraq—a $554 billion deficit. And if you look at next year, the 2004 debt is increased from $6.752 trillion to $7.321 trillion, for a deficit of $569 billion for next year.

On Wednesday, at the Budget Committee, the fix will be in. We used to have some moderates on the Budget Committee, but the leadership took the moderates off, so it will be bam-bam.

On Wednesday the Committee will have a conference and then on Thursday we will have amendments. It will be the Democrats who will have amendments because the Republicans are a fixed jury. They are a fixed jury, and they are not going to go along with any amendments, and they are going along with the President's budget and the President's tax cut because that is the makeup of the Republicans when they got rid of the moderates.

Before that we at least had a chance to talk and discuss with each other, but now the budget process that we instituted back in 1974 is pure sham. Their goal is to get those reconciliation instructions that by majority vote they will have. Then by majority vote they can pass all these tax cuts and everything else that they have, under limited time. You can't have extended debate. So the fix is on—unfortunately for the country.

According to the Committee for Economic Development, ''The first step in climbing out of a hole is to stop digging. We cannot afford economic policy decisions today that further raise deficits tomorrow.''

Congress ought to put down that shovel. That is the most important thing we have going, even more important than war. I think we can win the war. I don't think we are going to win this. This is terrible.

I ask unanimous consent to have printed in the RECORD the ''Hollings' Budget Realities'' chart.

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

HOLLINGS' BUDGET REALITIES

Pres. and year	U.S. budget (outlays) (in billions)	Borrowed trust funds (billions)	Unified deficit with trust funds (billions)	Actual deficit without trust funds (billions)	National debt (billions)	Annual increases in spending for interest (billions)
Truman:						
1947	34.5	−9.9	4.0	+13.9	257.1	
1948	29.8	6.7	11.8	+5.1	252.0	
1949	38.8	1.2	0.6	−0.6	252.6	
1950	42.6	1.2	−3.1	−4.3	256.9	
1951	45.5	4.5	6.1	+1.6	255.3	
1952	67.7	2.3	−1.5	−3.8	259.1	
Eisenhower:						
1953	76.1	0.4	−6.5	−6.9	266.0	
1954	70.9	3.6	−1.2	−4.8	270.8	
1955	68.4	0.6	−3.0	−3.6	274.4	
1956	70.6	2.2	3.9	+1.7	272.7	
1957	76.6	3.0	3.4	+0.4	272.3	
1958	82.4	4.6	−2.8	−7.4	279.7	
1959	92.1	−5.0	−12.8	−7.8	287.5	
1960	92.2	3.3	0.3	−3.0	290.5	
Kennedy:						
1961	97.7	−1.2	−3.3	−2.1	292.6	
1962	106.8	3.2	−7.1	−10.3	302.9	9.1
Johnson:						
1963	111.3	2.6	−4.8	−7.4	310.3	9.9
1964	118.5	−0.1	−5.9	−5.8	316.1	10.7
1965	118.2	4.8	−1.4	−6.2	322.3	11.3
1966	134.5	2.5	−3.7	−6.2	328.5	12.0
1967	157.5	3.3	−8.6	−11.9	340.4	13.4
1968	178.1	3.1	−25.2	−28.3	368.7	14.6
Nixon:						
1969	183.6	0.3	3.2	+2.9	365.8	16.6
1970	195.6	12.3	−2.8	−15.1	380.9	19.3
1971	210.2	4.3	−23.0	−27.3	408.2	21.0
1972	230.7	4.3	−23.4	−27.7	435.9	21.8
1973	245.7	15.5	−14.9	−30.4	466.3	24.2
1974	269.4	11.5	−6.1	−17.6	483.9	29.3
Ford:						
1975	332.3	4.8	−53.2	−58.0	541.9	32.7
1976	371.8	13.4	−73.7	−87.1	629.0	37.1
Carter:						
1977	409.2	23.7	−53.7	−77.4	706.4	41.9
1978	458.7	11.0	−59.2	−70.2	776.6	48.7
1979	504.0	12.2	−40.7	−52.9	829.5	59.9
1980	590.9	5.8	−73.8	−79.6	909.1	74.8
Reagan:						
1981	678.2	6.7	−79.0	−85.7	994.8	95.5
1982	745.8	14.5	−128.0	−142.5	1,137.3	117.2
1983	808.4	26.6	−207.8	−234.4	1,371.7	128.7
1984	851.9	7.6	−185.4	−193.0	1,564.7	153.9

HOLLINGS' BUDGET REALITIES—Continued

Pres. and year	U.S. budget (outlays) (in billions)	Borrowed trust funds (billions)	Unified deficit with trust funds (billions)	Actual deficit without trust funds (billions)	National debt (billions)	Annual increases in spending for interest (billions)
1985	946.4	40.5	−212.3	−252.8	1,817.5	178.9
1986	990.5	81.9	−221.2	−303.1	2,120.6	190.3
1987	1,004.1	75.7	−149.8	−225.5	2,346.1	195.3
1988	1,064.5	100.0	−155.2	−255.2	2,601.3	214.1
Bush:						
1989	1,143.7	114.2	−152.5	−266.7	2,868.3	240.9
1990	1,253.2	117.4	−221.2	−338.6	3,206.6	264.7
1991	1,324.4	122.5	−269.4	−391.9	3,598.5	285.5
1992	1,381.7	113.2	−290.4	−403.6	4,002.1	292.3
Clinton:						
1993	1,409.5	94.2	−255.1	−349.3	4,351.4	292.5
1994	1,461.9	89.0	−203.3	−292.3	4,643.7	296.3
1995	1,515.8	113.3	−164.0	−277.3	4,921.0	332.4
1996	1,560.6	153.4	−107.5	−260.9	5,181.9	344.0
1997	1,601.3	165.8	−22.0	−187.8	5,369.7	355.8
1998	1,652.6	178.2	69.2	−109.0	5,478.7	363.8
1999	1,703.0	251.8	124.4	−127.4	5,606.1	353.5
2000	1,789.0	258.9	236.2	−22.7	5,628.8	362.0
Bush:						
2001	1,863.9	268.2	127.1	−141.1	5,769.9	359.5
2002	2,011.0	270.7	−157.8	−428.5	6,198.4	332.5
2003	2,120.7	222.3	−199.2	468.6	6,619.9	324.1

Note.—Historical Tables. Budget of the US Government: Beginning in 1962, CBO's The Budget and Economic Outlook: Fiscal Years 2004–2013, January 2003.

Mr. HOLLINGS. What will happen when we have the budget debate is they will have leadership amendments. They will have something on prescription drugs and they will have something on some other thing, whatever it is. Then the real important ones you submit for 2 minutes. You describe your amendment and everybody votes. Senators will not get the opportunity to see this, so I hope they will all get this out of the CONGRESSIONAL RECORD.

When you talk about digging that hole, let me show you the hole we are really in. If, we have a deficit of $554 billion for this year, and last year we had a $428 billion deficit, and next year they project a $569 billion deficit—that, added together, is $1.5 trillion. That is $1.5 trillion of stimulus. We don't need a little dividend cut, or a little marriage penalty elimination to stimulate the economy. What we need is money and certainly not tax cuts, certainly not digging the hole. You are in a dickens of a hole if you are already in $1.5 trillion in deficit without the cost of Iraq.

For my colleagues, let me try to put this in perspective. If you add up all the deficits from Harry Truman in 1945 to Gerald Ford in 1975—if you take the 30 years cumulative of all deficits, which include the cost of World War II, the cost of Korea, the cost of Vietnam—it adds up to $358 billion. We are already talking, not $300 some billion over 30 years, but we are talking about $554 billion this year without the cost of Iraq.

You are in real trouble when you have to estimate that and you see the interest cost now. Lyndon Johnson was the last President to balance the budget. In 1968–1969 he had a surplus. That is the last time. I was here.

In fact, we met over on the House side, the distinguished chair—George Mahon was chairman of the Appropriations Committee. We didn't have a Budget Committee. I am almost convinced that we ought to go back to that because there was a conscience. This whole budget process has now become a charade.

But George Mahon said, you know the President is very, very sensitive about this guns and butter. We have to do something else, a little bit more if we are really going to balance it. He said, Call over to Marvin Watson and ask the President if we can cut another $5 billion, and we cut another $5 billion. If I am not mistaken, the budget at that time for guns, butter, the war in Vietnam was $178 billion.

Now we have a budget of almost $2.1 trillion. We pay $324 billion in interest per year—it is estimated that when the interest rates go back up, it will be back up to a billion a day in interest.

The first thing the Government does every morning at 8 when the banks open is borrow another $1 billion, every morning except Sunday this year. They are going to go down every day, including Saturday, including holidays. They will go down and borrow and add it to the debt. That is why we are running this $554 billion deficit.

But these interest costs are just saddling us, when we are paying over $300-some billion in interest, as much as the defense budget, and all just waste just because we didn't pay our way. We used to pay our way. We used to pay for the war. Yes, tell my friend Robert Novak when he constantly says we are going to pay for the war by borrowing just like we did for guns and butter in Vietnam—no, no. President Lyndon Johnson paid and balanced the budget then.

You have seen exactly what the score is with respect to digging a hole. I want to get right into the point of this so-called tax cut because nobody was better at stopping digging the hole and recognizing it, of course, than Mr. David Stockman. I had just come off the chairmanship of the Budget Committee, and I went over with Mr. Alan Greenspan to the Blair House and briefed President Reagan in December of 1980. I will never forget, the President said:

> Whoops, I had promised to balance the budget in 1 year. From what you gentlemen are telling me it is going to take 3 years.

That is when we went from a 1-year budget to 3 years. In 1981, I opposed those tax cuts, Reaganomics, what George Bush senior called voodoo. I opposed voodoo I. I opposed the increase in spending at that time because we all had a sense of responsibility. In order to stick it out and be able to serve around here, you have to go with the flow like the traffic in downtown Hanoi.

Listen to this, from page 342 of ''The Triumph of Politics'':

> The President had no choice but to repeal or substantially dilute the tax cut that would have gone far toward restoring the stability of the strongest capitalist economy in the world. Ronald Reagan chose not to be a leader but a politician. His obstinacy was destined to keep America's economy hostage to the errors of his advisers for a long, long time.

So under President Reagan, we had an $85.7 billion deficit in 1981, and it went up to $142.5 billion in 1982. That is when he was cutting taxes.

The next thing you know it was up to $234 billion and he ended up with a $252 billion deficit by his eighth year in office.

Then President George Herbert Walker Bush came in and he ended up with a $403 billion deficit. We never had over $100 billion in deficit until voodoo I came along.

Let me talk about voodoo II. I watched that because I have been in the budget lead now for quite some time. I come from a State where in order to be elected governor you have to promise to pay the bill. But in that same State, in order to be elected to the Senate you have to promise not to pay the bill. I am against the government of let us cut taxes. So I know whereof I speak. I have experience in the budget.

What happened when Governor Bush in September of 2000 said on the campaign trail said he was going to cut taxes. I sort of shook my head and smiled. I said, Well, that is campaign talk. That is not going to happen for the simple reason that we can't afford to be cutting taxes. But I sort of sobered up on the Friday after the election—on Tuesday in November 2000.

That is when Vice President-elect CHENEY said, Yes, that is what we are going to do. When Vice President-elect CHENEY said we were going to cut taxes, there was no recession yet.

Please listen. Harken all. Lend me your ears, for I can tell you what really started that recession in 2001. It was when Alan Greenspan, the chairman of the Federal Reserve, came on January 25, 2001 before the Budget Committee and he attested to the fact that we were paying down too much debt. He gave title and interest to the young President George W. Bush. He gave him the go-ahead with this $5.6 trillion debt.

Secretary of Treasury John Snow, former head of CSX and who used to head up the Business Roundtable, was always coming into my office because we were big admirers of CSX. He was always coming in worried about the budget and the deficits. When I talked to him on the phone before he became Secretary, I said, ''John, I see you are giving up two things.'' He said, ''What's that?'' I said, ''You are giving up your membership at Augusta National Golf Club, and you have given up any chance of balancing the budget and getting this Government out of the red. You are giving up on the deficit now, and you are going to head for deficits.''

I ask unanimous consent to have this 2001 debt time line schedule printed in the RECORD.

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

2001 DEBT TIMELINE

On January 25, 2001, we were $65 billion in the red.

On February 27, 2001, we were $53 billion in the red.

On April 15, 2001, we were $94 billion in the red.

On April 30, 2001, we were $13 billion in the black.

On May 1, 2001, we were $23 billion in the black.

On June 1, 2001, we were $4 billion in the black.

On June 7, 2001, the President signed the $1.7 trillion tax cut.

On June 15, 2001, we were $41 billion in the black.

On June 28, 2001, we were $52 billion in the red.

On September 10, 2001, we were $99 billion in the red.

On September 30, 2001, the end of the fiscal year, we were $141 billion in the red.

Mr. HOLLINGS. Mr. President, we have on January 25 the chairman of the Federal Reserve, Alan Greenspan, saying we are paying down too much debt.

On February 27, 2001, the President submitted his budget for the first time, and he said, in essence, I protect Social Security. I have $2.6 trillion to protect Social Security. I have $2 trillion for defense and domestic programs, and I have $1 trillion for unforeseen circumstances.

At the time Chairman Greenspan spoke, we were still in the red in deficits—$65 billion. When the distinguished President spoke on February 27 for the first time to Congress, we were $53 billion in the red. On April 15, the income tax time to make the returns, we were $94 billion in the red. But with all the tax payments coming in on April 15, by April 30 we were in the black by $13 billion. On May 1, we were $23 billion in the black. On June 1, we were $4 billion in the black. From the end of April to the first of June, we were in the black. But on June 7, the President signed the $1.7 billion tax cut, and by June 28, 20 days after he put his signature to the tax cut, we were $52 billion in the red. On September 10, we were $99 billion in the red.

They all said 9/11 caused this deficit. No. The day before 9/11, we were already, as a result of the tax cut, $99 billion in the red when the President was talking about $1 trillion for unforeseen circumstances. We have only authorized since 9/11 for the 2002 war on terrorism $20 billion. At the Congressional Budget Office they say 9/11 will only cost us $34 billion. Give them the double amount—some $60 billion that 9/11 may have cost. But it didn't cost any trillion dollars, and it didn't cause us to go back into the red. The tax cut is what we are suffering from. And thereby, as the Washington Post said, the first rule is to stop digging. But we will be meeting on Wednesday and Thursday with the Budget Committee, and there they will be determined to come in with shovels and dig as deep as they possibly can.

I happened to have fought with the French in World War II, and they are outstanding fighters. We are talking about NATO, how brave we are, how we are going into Iraq. I wish we had the courage to pay the bill. They say it is small by historical standards; that is, the deficit is 2.7 percent of the gross domestic product. But when you look at the actual debt, when they don't use Social Security, then the deficit as a percent of the gross domestic product is 5.7 percent.

The Greenspan Commission recommended that you are not to use Social Security trust funds, as the editorial points out, and that is exactly how they have lowered the deficit.

You see, when the editorial says, ''The deficit numbers above are cushioned by including $2.6 trillion from the Social Security trust fund,'' that is against the law, Senator. That is against, section 13–301, which passed the Senate 98 to 2.

I wanted it to pass unanimously, but I could not get Senator Armstrong's vote. That is the one I missed, along with Senator Boschwitz's. I had the greatest—and still have the greatest—respect for both Senator Boschwitz and Senator Armstrong. I could not get their vote, but I got everyone else's. It went to President Bush senior on November 5, 1990, and he signed that into law.

So under law, you are not supposed to be spending Social Security moneys on anything other than Social Security.

For the Social Security trust funds, you can see that here we have spent $1.489 trillion. Everybody is running around saying: Save Social Security. We are going to have to reform Social Security. We are going to have to do this and do that. All they need to do is quit spending Social Security moneys on any and everything but Social Security. That is the whole problem.

Of course, you can see what they are spending for Medicare, military retirement to civilian retirement, the unemployment compensation fund, the highways, the airports, the railroad retirement, and others.

We are spending some $2.7 trillion already of all of these other trust funds. Yet we are going to do something on account of the baby boomers? I want to do something on account of the adults and get some conscience to this group up here and some awareness to the media and everybody to understand, let's have truth in budgeting.

The Secretary of the Treasury puts it out every day—the public debt, to the penny—and you can see how much the debt goes up. The debt clock is running every second in New York for the people to see. But we give them Enron accounting. It is small here, and we have another figure here, and everything else. So you can see we are spending a little over $40-some billion per month.

I think with that chart, and the distinguished Senator from Utah being here, I am sure I am using the Hatch rule on Estrada. Under the Hatch rule, you said, on another Hispanic nominee we had at one time, that you were worried she would be an activist and would legislate from the bench. That is exactly what I am worried about with Estrada.

I appreciate the time of the body. I would be glad if somebody wants to debate Mr. Estrada. Tell them I know very little about him except for the fact that when he was given the opportunity to come up to get my vote for confirmation, he elected to rudely not answer. I know the gimmick, and I know what they are doing. I voted for Robert Bork. David Boren of Oklahoma and myself were the two Democrats who voted for Robert Bork. I am delighted to vote for conservatives. My State is conservative. But don't send a fellow up and think he can engage in that kind of monkey business of not even answering the questions.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I understand that we are on the Executive Calendar under the executive order; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. CRAIG. And that we are considering the nomination of Miguel Estrada to the Tenth Circuit.

The PRESIDING OFFICER. The Senator is correct.

Mr. CRAIG. I thank the Presiding Officer.

Mr. President, I listened to my colleague from South Carolina for a good number of minutes and have always been fascinated by his review of the budget and budget processes.

I am also always frustrated by the reality of a general fund budget, in a comprehensive budget policy under which we operate, and the fungibility of moneys, and the broad general system in which we take Social Security moneys, once appropriately registered in the trust funds of Social Security, and then it being moved into the general fund of our country; that, in fact, Social Security money is spent and bonds are taken out or loans are made against the trust funds and interest is bearing and money is replaced. So to suggest that trust fund moneys cannot be spent once they have been appropriately accounted for is a frustration.

But let me stop there because I came to the floor this afternoon to once again speak about Miguel Estrada and his nomination and, of course, where the Senate is at this moment in time, which is not only important for all of us but important for the judiciary of our country, that we are able to bring to the floor of the Senate highly qualified men and women who have been appropriately vetted by the administration—no matter what administration it is—and that the nominations of these people are reviewed by the Judiciary Committee and then brought to the floor for a vote.

What has gone on here for well over 4 weeks is the denial of that opportunity to vote. We did have a vote last week. It was a cloture vote. It is part of the inside ball game of the Senate that oftentimes those who are observers of what we do do not understand.

We got 55 votes, if you will, for Miguel Estrada. My goodness, that is 50 percent plus 5 of a 100-member body. Surely, that would confirm this fine judicial nominee.

Quite to the contrary, it was a cloture vote. Under a cloture vote, with a supermajority rule in the rules of the Senate, it simply says you have to get 60 before you have the right to get 50 plus 1 of those present and voting.

That has to be awfully confusing for anyone listening or observing. Clearly, the rules of the Senate are to make sure that our Constitution is upheld, or at least a prescription of our Constitution, that requires that all States enter in and are members of the United States under our Constitution and are equal in the Senate. Therefore, we have historically, and appropriately so, erred on the side of protecting the minority. And that, of course, is the cloture process: to make sure that a supermajority finally decides it is time to vote on an issue.

I hope that over the course of the next several weeks we can gain cloture and that we can get to the real vote, the honest vote, the fair vote, the appropriate vote of 50 plus 1 of those present and voting for the confirmation of Miguel Estrada under the advice and consent clause of our Constitution.

Let me recap, for a few moments, some of the arguments we have heard on the floor of the Senate over the last several weeks about this fine nominee: We are asked, if you will, to rubberstamp everyone the President sends up, and we should not inquire, we should not be probative, we should not look into the individual's background.

Well, that is an interesting argument, but it echoes in such a hollow way on the floor of the Senate when you look at the reality and the fact that Mr. Estrada has been before the Judiciary Committee for over 2 years and that we have had now a very extensive filibuster—or shall I say extended debate—that has talked about almost every aspect of Miguel Estrada's professional life—his career and his life in general; that he was thoroughly investigated by the FBI, and those records were brought to the Judiciary Committee for all of us to examine, and somehow we are no ''rubberstamping,'' after literally hundreds and hundreds of pages of material, and the process of this investigation is now compiled in the Judiciary Committee on Mr. Estrada.

Rubberstamping? I think not. Rubberstamping is not when any Senator can vote how he or she wishes. We are not suggesting that everybody vote yes. We are suggesting that everybody vote—yes or no, up or down—and that Mr. Miguel Estrada be given his day, as should the President be given the right to have his or her nominees brought to the floor for an up-or-down vote.

I say to my colleagues on the other side, that ain't a rubberstamp; that is doing what you are asked to do when you are sworn in as a Member of the Senate—to vote up or down on the issue, face the tough votes, face the easy votes. I have one job here, as do 99 other Senators, and that is to come to the floor of the Senate and vote. That is what my State asks. That is the role I play for my State. That is all our President asks. I am quite sure that is what Miguel Estrada would like.

Our colleagues have complained that Mr. Estrada is a ''blank slate;'' that there is not enough information for Senators to be able to make a responsible judgment about his ability to serve.

You have heard my colleague from South Carolina say not all the questions have been answered. Well, Miguel Estrada has literally called every Senator's office and said, ''I will come and visit with you and I will respond to your questions.'' But, no, that is not good enough. We don't want him in our office; we want him before the committee again responding to the questions that the committee would choose to ask and, of course, we would like more of the record that he compiled while serving in the Justice Department under both Democrat and Republican Presidents.

It is a very frustrating time we have here when, in fact, that which they argue has been answered not only once but twice or a hundred times over. When you, therefore, compile all of this and analyze the record, there has to be something more than just the background, just the information. I think it is, in fact, the politics of the issue today, and the effort on the part of the far left to cause the Democrat Party to try to deny Miguel Estrada his day on the floor of the Senate in an up-or-down vote with Members present and voting.

Let me talk a little bit about some of the questions asked. I am quoting from a phenomenally comprehensive letter which was sent to the Senate by the legal counsel at the White House. I have it here. It is 15 pages. Counsel to the President, Judge Gonzales, sent this up on February 12. It goes into great detail. I thought for a few moments I would, once again, for the record, talk of some of that detail and some of the answers that both Miguel Estrada has responded to and that Judge Gonzales, legal counsel to the White House, has responded to—only for those who are concerned about the CONGRESSIONAL RECORD that we compile here to clearly understand that the arguments placed by the other side are so hollow, they have hardly no echo today, because questions have been asked and answers have been given.

Miguel Estrada answered the committee's questions—and this is according to Judge Gonzales. I was not there at the time. I now serve on the Judiciary Committee, but these questions were leveled at Miguel Estrada in the 107th Congress. I was not a member of the committee at that time.

Miguel Estrada answered the Committee's questions forthrightly and appropriately. Indeed, Miguel Estrada was more expansive than many judicial nominees traditionally have been in Senate hearings, and he was asked a far broader range of questions than many previous appeals court nominees were asked.

He goes on to catalog the questions and the answers in the area of rights, privacy and abortion, unenumerated rights.

When asked by Senator Edwards about the Constitution's protection for rights not enumerated in the Constitution, Mr. Estrada replied: ''I recognize that the Supreme Court has said [on] numerous occasions in the area of privacy and elsewhere that there are unenumerated rights in the Constitution, and I have no view of any sort, whether legal or personal, that would hinder me from applying those rulings by the court. But I think the court has been quite clear that there are a number of unenumerated rights in the Constitution. In the main, the court has recognized them as being inherent in the right of substantive due process and the liberty clause of the Fourteenth Amendment.

When asked by Senator Feinstein whether the Constitution encompasses a right to privacy and abortion, Mr. Estrada responded, ''The Supreme Court has so held, and I have no view of any nature whatsoever, whether it be legal, philosophical, moral, or any other type of view that would keep me from applying that case law faithfully.'' When asked whether Roe v. Wade was ''settled law,'' Mr. Estrada replied, ''I believe so.''

That is a pretty straightforward answer. That is as clear as you can get on issues of privacy and abortion. I cannot understand why the other side cannot accept that as a responsible and clear answer.

General approach to judging.

In other words, what is your philosophy? How do you react?

When asked by Senator Edwards about judicial review, Mr. Estrada explained: ''Courts take the laws that have been passed by you [meaning the Senate] and give you the benefit of understanding that you take the same oath that they do to uphold the Constitution, and therefore they take the laws with the presumption that they are constitutional. It is the affirmative burden of the plaintiff to show that you have gone beyond your oath. If they come into court, then it is appropriate for courts to undertake to listen to the legal arguments—why it is that the legislature went beyond [its] role as a legislature and invaded the Constitution.''

Mr. Estrada stated to Senator Edwards that there are 200 years of Supreme Court precedent and that it is not the case that ''the appropriate conduct of the courts is to be guided solely by the bare text of the Constitution because that is not the legal system that we have.

In other words, he was talking to that precedent in relation to the strictness of the Constitution.

When asked by Senator Edwards whether he was a strict constructionist, Mr. Estrada replied that he was ''a fair constructionist,'' meaning that, ''I don't think that it should be the goal of the courts to be strict or lax. The goal of the court is to be right. . . . It is not necessarily the case in my mind that, for example, all parts of the Constitution are suitable for the same type of interpretive analysis. . . . [T]he Constitution says, for example, that you must be 35 years old to be our chief executive. . . . There are areas of the Constitution that are more open-ended. And you adverted to one, like the substantive component of due process clauses, where there are other methods of interpretation that are not quite so obvious that the court has brought to bear to try to bring forth what the appropriate answer should be.

That is an understandable answer when the law is as specifically as 35 years; that is interpretive. When the Constitution gives you the opportunity for some interpretation, of due process, then of course that goes to the fair-mindedness of the individual judge involved within the framework of precedent so ruled.

When Senator KOHL asked him about the environmental statutes, for example, Mr. Estrada explained that those statutes come to court with a ''strong presumption of constitutionality.'' In other words, there is a presumption that those laws that the Congress of the United States passes are constitutional by their passage, only later to be tested in the courts to find out how constitutional or if they can withstand that test.

In response to Senator LEAHY, Mr. Estrada described the most important attributes of a judge:

The most important quality for a judge, in my view, Senator LEAHY, is to have an appropriate process for decisionmaking. That entails having an open mind. It entails listening to the parties, reading the briefs, going back beyond those briefs and doing all of the legwork needed to ascertain who is right in his or her claims as to what the law says and what the facts [are]. In a court of appeals court, where judges sit in panels of three, it is important to engage in deliberation and give ear to the views of colleagues who may have come to different conclusions. And in sum, to be committed to judging as a process that is intended to give us the right answer, not to a result.

In other words, not to what had been planned or anticipated but the right answer in relation to the law and the Constitution.

And I can give you my level best solemn assurance that I firmly think I do have those qualities or else I would not have accepted the nomination.

Here, of course, he is talking about his own character, his own makeup, the thinking processes that have allowed Miguel Estrada over the years to rise as far as he has and to be recognized by most as a very brilliant legal mind.

In response to Senator DURBIN, Miguel Estrada stated that:

The Constitution, like other legal texts, should be construed reasonably and fairly, to give effect to all that its text contains.

Mr. Estrada indicated to Senator DURBIN that he admires the judges for whom he clerked: Justice Kennedy, Judge Kearse, as well as Justice Lewis Powell.

Miguel Estrada stated to Senator DURBIN:

I can absolutely assure the committee that I will follow binding Supreme Court precedent until and unless such precedent has been displaced with subsequent decisions by the Supreme Court itself.

That is an interesting and a very important response to a question that many will argue he has not been asked or he has denied or refused to answer. Let me repeat that. When asked about how he will respond to certain cases brought before the court as it relates to decisions made by the Supreme Court, he said:

I can absolutely assure the committee that I will follow binding Supreme Court precedent until and unless such precedent has been displaced by subsequent decisions of the Supreme Court itself.

In response to Senator GRASSLEY, Mr. Estrada stated:

When facing a problem for which there is not a decisive precedent from a higher court, my cardinal rule would be to seize aid from any place where I can get it. Depending on the nature of the problem, that would include related case law in other areas that higher courts had dealt with that had some insight to teach with respect to the problem at hand. It could include the history of the enactment, including a statute's legislative history. It should include the custom and practice under any statute or document. It should include the views of the academicians to the extent they purport to analyze what the law is, instead of prescribing what it should be. And in sum, as Chief Justice Marshall once said, to attempt not to overlook anything from which aid might be derived.

There is a very open, probative, bright mind responding to that kind of question. You go to the resources at hand to ultimately compile the information from which to make a decision, to make judgment.

In response to Senator SESSIONS, Mr. Estrada said:

I am firmly of the view that although we all have views on a number of subjects from A to Z, the first duty of a judge is to self-consciously put that aside and look at each case by starting withholding judgment with an open mind and an answer to the parties. So I think the job of a judge is to put all of that aside and, to the best of his human capacity, to give a judgment based solely on the arguments and the law.

Again, straightforward, very clear answers with which I think all should be satisfied.

In response to Senator SESSIONS, Mr. Estrada stated:

I will follow binding case law in every case. I may have a personal, moral, philosophical view on the subject matter, but I undertake to you that I would put all that aside and decide in accordance with binding case law and even in accordance with the case law that is not binding but seems constructive on that area, without any influence whatsoever from my personal view I may have about the subject matter.

The letter goes on to deal with Miranda, with congressional authority, ethnicity, racial discrimination, right to counsel, congressional authority to regulate firearms—phenomenally complete responses to very critical questions that speak to the mind and the legal training of a tremendous talent whose nomination we now have before us.

Somehow that is not good enough. Somehow our colleagues on the other side, time and again, have said: No, no, we need to go back to the committee to ask the questions. We need now all of the legal drafts and the memos that are a part of Mr. Estrada's record at the Justice Department when he worked there for both Presidents Bush, Sr. and President Clinton and, of course, Democrats and Republicans alike have said those are simply off the record and we cannot go there, nor should we go there.

The question is: Why go there at this time when we now have such a very complete record that speaks to the mind, the temperament, the judgment, the talent of Miguel Estrada? I think the answer is quite simple: We should not.

There is a simpler answer, and it is one we seek and one we have asked our colleagues for, and that is the right for an up-or-down vote on the floor of the Senate. Under the advise and consent clause of our Constitution, I am one who firmly believes that is the responsibility of the Senate, to review, to analyze, to be probative, as we have, but ultimately to bring a President's nominee to the floor for the purpose of a vote, a 50-percent plus 1 vote of those present and voting. I firmly believe that.

We are going to continue to pursue the confirmation of Miguel Estrada, as we must. We can simply not allow a nominee to come to the floor and for those who are in opposition to simply

filibuster until all are exhausted and we all retreat into the shadows because no one wants to vote up or down. That is quite the opposite in this case. We clearly do need a vote. We want a vote. Let us not hide behind the supermajority in this instance. That is not an excuse for the ultimate oath of office that we have taken and the responsibility that we have at hand as Senators.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Ms. MIKULSKI. Mr. President, I ask unanimous consent to speak as in morning business.

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

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

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

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

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

Mr. JEFFORDS. I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I inquire of the Presiding Officer, are we now automatically returned to the period of time allocated to the pending nomination for the circuit court of appeals?

The PRESIDING OFFICER. The Senate is now in executive session on the Estrada nomination. That is the pending order of business.

Mr. WARNER. I thank the distinguished Presiding Officer.

Mr. President, article II, section 2 of the Constitution provides that the President:

> Shall nominate by, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court, and all other Officers of the United States. . . .

As I read that historic phrase, and reflect and study on the history behind it, I reach the conclusion that these are coequal powers as it relates to the Federal judiciary responsibilities. They are balanced powers and, as such, they give strength to that time-honored doctrine of checks and balances between the three separate but coequal branches of our Federal Government.

The debate before us today goes to the very heart of our Constitution and the doctrine of checks and balances. As such, we should examine the very roots of our Republic to determine these respective responsibilities of the three branches of our Government.

The magnificence of the ''great experiment,'' a term used by the skeptics of the work of our Founding Fathers, is what has enabled our Republic to stand today, after over 200 years, as the longest surviving democratic form of government still in existence.

I remember one time I used that phrase in an audience of some very erudite individuals. One person jumped to their feet and said: Oh, no, Switzerland. And I reminded them that Napoleon crossed the Alps and severed the continuity of that wonderful government.

So there we are, these proud States, forming our Republic known as the United States. The survival of that great experiment is dependent upon the continuous fulfillment of the balanced, individual responsibilities of the three branches of our Government.

I reflect now on the history of that clause ''advice and consent.''

During the Constitutional Convention, the Framers labored extensively over this clause, deferring for several months a final decision on how to select Federal judges. Some of the Framers argued that the President should have absolute and total authority to choose members of the judiciary. Others thought both the House of Representatives and the Senate should be involved in providing advice and consent. Ultimately, a compromise plan put forth by that distinguished Virginian, James Madison, won the day where the President would nominate the judges, and only the Senate, only one branch of the Congress, would render advice and consent. Such a process is entirely consistent with the system of checks and balances, that inherent doctrine in the Constitution that the Framers carefully placed throughout many provisions of the Constitution.

Presidents select those who should serve on the judiciary, thereby providing a philosophical composition of that President and the times in which he is privileged to serve in that office. However, the Senate has a check on the President because it is the final arbiter with respect to a nominee. But I look at those responsibilities as coequal, a check and a balance, but neither branch of Government, executive nor the legislative, has a power greater. I think they are coequal in the exercise of joint responsibility to, in fact, create the third branch, the Federal judiciary, through this process.

Historically, judicial nominations have needed only a majority of votes in the Senate for confirmation. I think that long history is for good reason. It is to preserve the inherent checks and balances and the coequal responsibility between the two branches in creating the judiciary. Only once, in these 200-plus years, has a judicial nominee been rejected by the Senate due to a filibuster. That was Abe Fortas, a nominee for the Supreme Court.

Indeed, a simple majority of votes in support of the confirmation of a nominee is also consistent with the Constitution which specifically spells out instances where, for example, a supermajority of votes is needed. For example, under the Constitution, two-thirds of the Senate must vote to ratify a treaty. Two-thirds of the Senate must vote to convict on an article of impeachment. Two-thirds of a House of Congress must vote to expel a Member of that body. Two-thirds of each House of Congress must vote to override a President's veto, and two-thirds of each House must vote to propose an amendment to the Constitution.

So when the Framers wanted to change the power structure as it relates to the respective duties of the branches, it did so expressly by creating the two-thirds supermajority vote.

In this instance, we are talking about a Senate rule which requires 60 votes to stop a filibuster. It is not constitutional. It is a Senate rule. The Framers did not think a supermajority was needed. The Framers probably did not have in mind the possibility someday of a 60-vote filibuster.

So I come back that it is clear that the Constitution wanted to have a coequal responsibility and balance of power between the two branches as it related to their respective functions in forming and creating the Federal judiciary.

If the Framers intended judicial nominees to be subjected to a supermajority vote, they would have included such language in the Constitution. In my view, the reason they did not include a supermajority requirement in regard to judicial confirmations is that otherwise it might prove too difficult for certain judicial nominees to be confirmed. If the bar was set too high, then the Senate would have far more power in the judicial process than the President. The checks and balances concept of our Founding Fathers would cease.

Is this what the Framers intended, that that inherent balance of power should in any way be violated? Absolutely not. We do not want the checks and balances concept to cease in the case of judicial nominations.

I recognize the filibuster, a rule created by the Senate itself and not by the Constitution, obviously does require the Senate to have 60 votes in certain circumstances in order for it to proceed. But in the context of judicial nominations, use of the filibuster to defeat a nominee would thwart the carefully crafted system of checks and balances put into place in our Constitution by the infinite wisdom of the Framers of that Constitution.

Throughout the quarter of a century I have been privileged and had the honor of representing the Commonwealth of Virginia in the Senate, I have conscientiously in each of those years under all of the Presidents I have served with made the effort to work on judicial nominations in a fair and objective way, recognizing the doctrine of checks and balances and the coequal authority of the two branches.

Whether our President was President Carter, President Ronald Reagan, President George Bush, President Clinton, or President George W. Bush, I have been privileged to accord equal weight to the nominations of all Presidents, irrespective of party. I have done so because of my belief that if the concept of equal power sharing and the concept of checks and balances was lost in the judicial confirmation process, then we may ultimately discourage many highly qualified men and women nominees from offering to serve in our judiciary.

Certainly each Senator is entitled to vote for or against a particular nominee for any reason he or she deems important. And it is clear our Framers did not intend the Senate's role in the advice and consent process to be a rubberstamp. No one is suggesting that. Exercise your authority. Exercise your judgment. Do it fairly. Do it consistently with the doctrine of checks and balances inherent in the Constitution.

This much is evident from history. Soon after the Constitution was ratified, the Senate rejected a nomination put forward by our first President, our founding father, George Washington.

President Washington nominated John Rutledge to serve on the U.S. Supreme Court. Even though Mr. Rutledge had previously served as a delegate to the Constitutional Convention, the Senate rejected his nomination. It is interesting to note many of those Senators who voted against the Rutledge nomination were also delegates to the Constitutional Convention.

The key differences between the Rutledge nomination of over 200 years ago and the Estrada nomination of today is that Mr. Rutledge received an up-or-down vote. A simple majority controlled. The early Members of our Senate, some of whom participated in the Constitutional Convention, allowed an up-or-down vote on Mr. Rutledge even though they opposed him.

On the other hand, Mr. Estrada has not received a vote and he is being subjected to a filibuster-proof majority for confirmation.

Our Founding Fathers, I say to my colleagues, were not so prudent of the requirement for the 60 votes.

Mr. Estrada is being opposed simply because of his political ideology. In the view of this Senator we ought to accord equal weight to a President's nominees, irrespective of party. I have tried to abide by this principle throughout my 25 years in the U.S. Senate.

For example, in the 106th Congress and the 107th Congress, I was honored to support the nomination of Roger Gregory. Judge Gregory was originally nominated by President Clinton and he was supported by Virginia's former Democratic Governor Doug Wilder.

Regardless of political ideologies, and regardless of which President nominated him, Judge Gregory was highly qualified to sit on the bench. We are fortunate to have him on the United States Court of Appeals for the Fourth Circuit. Judge Gregory is now the first African American Judge to ever serve on the United States Court of Appeals for the Fourth Circuit, and he is serving with distinction.

Judge Gregory's qualifications were clear cut. Regardless of which President nominated him, he deserved the support of the United States Senate.

Like Judge Gregory, Miguel Estrada's nomination is also a clear-cut case.

Mr. Estrada has received a unanimous ranking of ''well qualified'' by the American Bar Association. In my view, his record indicates that he will serve as an excellent jurist.

Mr. Estrada's resume is an impressive one. Born in Honduras, Miguel Estrada came to the United States at the age of 17. At the time, he was able to speak only a little English. But, just 5 years after he came to the United States, he graduated from Columbia College with Phi Beta Kappa honors.

Three years after he graduated from Columbia, Mr. Estrada graduated from Harvard Law School where he was an editor of the Harvard Law Review.

Mr. Estrada then went onto serve as a law clerk to a Judge on the United States Court of Appeals for the 2nd Circuit and as a law clerk to Judge Kennedy on the United States Supreme Court.

After his clerkships, Mr. Estrada worked as an Assistant United States Attorney, as an assistant to the Solicitor General in the Department of Justice, and in private practice for two prestigious law firms.

Throughout his career, Mr. Estrada has prosecuted numerous cases before federal district courts and federal appeals courts. He has argued 15 cases before the U.S. Supreme Court.

Without a doubt, Mr. Estrada's legal credentials make him well qualified for the position to which he was nominated. I am thankful for his willingness to resume his public service, and I am confident that he would serve as an excellent jurist.

In closing, Mr. President, it is clear to me that the Senate's role in the confirmation process is more than just a mere rubber-stamp of a President's nomination; but it is the Senate's constitutional responsibility to render ''advice and consent'' after a fair process of evaluating a President's nominee. After that process is complete, nominees who emerge from the Judiciary Committee ought to be accorded up or down vote.

Should a Senate rule overrule the Constitutional responsibilities of checks and balances? I think it should not.

Thomas Jefferson once remarked on the independence of our three branches of government by stating, ''The leading principle of our Constitution is the independence of the Legislature, Executive, and Judiciary of Each other.''

I would add that each branch of government must perform its respective responsibilities in a fair and timely manner to ensure that the three branches remain independent.

In my view, we must ask ourselves:

Is the current filibuster of Miguel Estrada's consistent with our country's last 200 plus years since our Constitution was ratified?

Are we fulfilling our constitutional responsibilities to preserve the doctrine of checks and balances?

In my view, we don't want to set a precedent that alters the inherent responsibilities of checks and balances in the judicial confirmation process.

But, these questions are for each Senator to decide upon.

I for one, though, fear the precedent that would be set if the Senate does not support cloture for Miguel Estrada and I fear what it might mean for the future of our Judiciary, and the future of our Republic.

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. SANTORUM. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SANTORUM. Mr. President, I ask unanimous consent that the scheduled vote this evening on the Frost nomination now occur at 5:45, provided that debate time from 5 p.m. to 5:45 p.m. be equally divided as under the earlier order.

Mr. REID. No objection.

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

LEGISLATIVE SESSION

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

PARTIAL-BIRTH ABORTION BAN ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to consideration of S. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 3) to prohibit the procedure commonly known as partial-birth abortion.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, we are now on a piece of legislation known

as the partial-birth abortion bill. It is a bill we have debated in the Senate in two previous Congresses on four different occasions. We debated it the first time and passed it. It was vetoed by the President, President Clinton at the time, back in 1996. Then we attempted to override the President's veto and fell just a few votes short.

We came back the next session, went through the same process, sent the bill to the President, he vetoed it again, and we came closer but we still failed in overriding the President's veto.

Subsequently, there were a whole series—actually, concurrent with that debate—of States, over half the States in the Union, that passed bans on this horrific partial-birth abortion procedure. That is the procedure where the baby is delivered—this is a baby at over 20 weeks gestation; in other words, halfway through the pregnancy. The gestational period is 40 weeks. This procedure is only performed on babies in utero after 20 weeks. So these are late-term abortions.

The process is as follows: A woman shows up and decides she wants to have an abortion after 20 weeks. A doctor decides to use this methodology. The woman is given a drug to dilate her cervix. She is sent home. Two days later she returns, and the baby is then delivered in a breech position. Under the definition of this act as currently constituted, the baby has to be alive when it is brought in through the birth canal, the baby has to be in a breech position, has to be outside the mother at least past the navel, and be alive. Then the baby is killed in a fashion that I will describe in more detail later.

That procedure, as I said, was banned by over 25 States. It was brought, obviously, to the courts by many in those States. There were a couple of circuit courts that found this to be constitutional, one that did not. The Supreme Court took one of those cases, the Nebraska case that was appealed to the circuit, and made a decision which I think was in error. It was a horrible decision, but a decision I think we need to contemplate here. It is a decision that said that an abortion past 20 weeks of a child that would otherwise be born alive is now encompassed by Roe v. Wade.

You hear a lot of comments about Roe v. Wade, that Roe v. Wade only allows legal abortions within the first trimester and under limited circumstances in the second trimester. These are babies in the second and third trimester, where the courts have basically said, as many of us who have been studying this issue for a long time have said, that there is no limitation on the right to abortion. Abortion is a right that is absolute in America. There are no limitations, as a result of court decisions, on the right to an abortion.

So they held, in this case, that the language of the statute was too vague and that—the description of the procedure was too vague, and that there needed to be a health exception to this procedure; in other words, to preserve the health of the mother.

We have responded to that with a bill we introduced last year, in the last session of Congress. In the last session of Congress, we introduced a piece of legislation in the House that was passed. STEVE CHABOT, at the time chairman of the Constitution Subcommittee on the Judiciary Committee, passed a piece of legislation in the House that banned this procedure. It is identical to the bill that is on the floor today. We asked for its consideration last year.

I came to the floor on a couple of occasions and asked for unanimous consent to bring this bill forward. I agreed to debate it on Fridays and Mondays, so as not to interrupt the rest of the Senate's schedule, I agreed to stay on the weekend if that was necessary so we could deal with amendments. Unfortunately, even though the bill passed in July of last year, it was not scheduled here on the Senate floor for debate and for passage—for action.

That is why I believe this is unfinished business from last year and one of the reasons I advocated for its early consideration this year. I thank our leader, Senator FRIST, for his willingness to bring this bill to the floor promptly, for us to be able to have this debate, to look at the issues involved with respect to this issue.

We believe the issues the Supreme Court brought up with respect to the infirmities in the Nebraska statute have been addressed by this legislation. First, we have gone into much greater detail in describing this procedure, and either later tonight or tomorrow I will read the text of the bill and I will provide graphic illustration as to how this procedure is conducted.

Second, we dealt with the issue of health. Roe v. Wade requires a health exception when the health of the mother is potentially in danger. We have included in this legislation a voluminous amount of material that shows clearly, without dispute, in my mind—without dispute, period, not just in my mind—without any medical dispute, that there are no reasons this procedure has to be available for the health of the mother because there are no instances in which this procedure is required for the health of the mother. There is no medical organization out there that believes that to be the case.

While some do not support the legislation or have a neutral position, nobody has come forward and said this is medically necessary to protect the health of the mother, much less, by the way, the life of the mother.

So, since there is no reason for a health exception because there are no instances where a health exception is needed, then Roe does not apply. So we have laid that out very clearly in this legislation. We believe as a result of that, Congress has the right—because we do a heck of a lot more exhaustive study, in our deliberations with hearings and other testimony, than the Supreme Court can. They have to rely on the record of the lower court and the arguments made to that lower court.

In the case of Nebraska, frankly, the arguments were not particularly well put and the evidence was not particularly robust for either side. It was a very weak record, and the court made a decision based on that record. They will have a different record before them in this case when it is brought up to the court, and I believe the record will be clear and dispositive that no health exception is necessary. We have dealt with the constitutional issues. Now we are back to the focus of this legislation. Do you want to allow a horrific procedure that is not medically necessary, never medically indicated, not taught in any medical school in this country, not recommended, and which, in fact, major health organizations of this country have said is bad medicine, contra-indicated, that is so brutal in the way it is administered to a baby that otherwise would be born alive?

Let me emphasize that it is a baby fetus—some will refer to it as the child in utero—that would otherwise be born alive. You don't want to allow this child to be brutally killed by thrusting a pair of scissors into the back of its skull and suctioning its brains out.

This goes on in America thousands of times a year. The number of partial-birth abortions has tripled, according to the abortion industry that doesn't keep very good records. They admit that. It has tripled, they say, to 2,200. Oddly enough, back in 1997 when we were debating this, the Bergen County Record took the bother of asking the local abortion clinic how many they did just in Bergen County. The partial-birth abortion national number at that time was 600. In Bergen County, they did 1,500. I guess they dismissed that.

The bottom line is that this goes on an enormous amount of times and they call it a rare procedure. If we had a procedure that killed 2,200 children in America every single year, we would not be saying it is a rare procedure in America. If we had a disease that affected 2,200 little babies every year, we wouldn't say this is a rare thing when we know, by the way, that the number is multiples of that. The people we have to rely on for that information are the people who want this to be legal and who don't tell us about the abortions they perform.

This is something that needs to be done. I am hopeful that we can deal with this issue in an expeditious fashion, get this over in the House of Representatives and have them pass it, and have the President sign it, because he will sign it.

I think there is broad bipartisan support for this legislation as there has been in the past. It is overwhelmingly supported by the American people. A very large majority support this legislation. Even those who do not consider themselves pro-life believe that at

some point we have to draw the line on the brutal killing of a child literally inches from constitutional protection—inches from being born and being completely separated from the mother, being held in the birth canal and executed, having scissors thrust into the base of its skull and then to have a suction catheter inserted and the ''cranial content'' removed.

Just to describe it here sends chills down your back. Yet people will defend this procedure and say that a civilized nation such as America believes this is proper medicine. Medicine, healing? I, frankly, don't know who is healed in that situation. I do not know who is protected in that situation when every credible medical core organization says it is not medically necessary; in fact, it is ''bad medicine,'' and it is harmful to the woman. I have just described how harmful it is to the little child.

I ask my colleagues to join me in passing this piece of legislation and ending this outrageous procedure.

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

The PRESIDING OFFICER (Mr. TALENT). The Senator from California.

Mrs. BOXER. Mr. President, could you advise me when I have used 9 minutes.

The PRESIDING OFFICER. The Chair will so advise.

Mrs. BOXER. I thank the Chair.

Mr. President, there have been so many misstatements made on this floor right now in just a few minutes that I don't know where to start.

Why don't I start with the whole point that we have made over and over again. We are Senators. We are not doctors. With all due respect to my friend from Pennsylvania, if my daughter were in trouble with pregnancy, I wouldn't go to him. I would go to her OB-GYN. And I would say, Tell us what do we have to do to make sure this birth goes well, and tell us what we have to do to make sure our daughter's life will not end and that her health will not be impaired forever. I would not go to the Senator from Pennsylvania in that circumstance.

There are many arguments that we will lay out. Today, we only have a few very short minutes. Senator MURRAY and I are going to share the time. We have a number of amendments that we are going to offer during this week to talk about what we think is very important for women's health, and, frankly, the health of their families and their children.

This bill, S. 3, is called the Partial-Birth Abortion Ban Act. It should be called the following: The ''Criminalizing Medically Necessary Procedures Act,'' because the procedures that are banned are necessary to save the life and the health of a woman facing a medical emergency during a pregnancy.

My friend from Pennsylvania makes light of it. Oh, this doesn't hurt women. This is fine for women. Let me tell you who agrees with us and who disagrees with the Senator from Pennsylvania.

To start, I have a letter that I ask unanimous consent be printed in the RECORD from Physicians for Reproductive Choice and Health.

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

MARCH 10, 2003.

Hon. BARBARA BOXER,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOXER: We are writing to urge you to stand in defense of women's reproductive health and vote against S. 3, legislation regarding so-called ''partial birth'' abortion.

We are practicing obstetrician-gynecologists, and academics in obstetrics, gynecology and women's health. We believe it is imperative that those who perform terminations and manage the pre- and post-operative care of women receiving abortions are given a voice in a debate that has largely ignored the two groups whose lives would be most affected by this legislation: physicians and patients.

It is misguided and unprincipled for lawmakers to legislate medicine. We all want safe and effective medical procedures for women; on that there is no dispute. However, the business of medicine is not always palatable to those who do not practice it on a regular basis. The description of a number of procedures—from liposuction to cardiac surgery—may seem distasteful to some, and even repugnant to others. When physicians analyze and debate surgical techniques among themselves, it is always for the best interest of the patient. Abortion is proven to be one of the safest procedures in medicine, significantly safer than childbirth, and in fact has saved numerous women's lives.

While we can argue as to why this legislation is dangerous, deceptive and unconstitutional—and it is—the fact of the matter is that the text of the bill is so vague and misleading that there is a great need to correct the misconceptions around abortion safety and technique. It is wrong to assume that a specific procedure is never needed; what is required is the safest option for the patient, and that varies from case to case.

THE FACTS

(1) So-called ''partial birth'' abortion does not exist.

There is no mention of the term ''partial birth'' abortion in any medical literature. Physicians are never taught a technique called ''partial birth'' abortion and therefore are unable to medically define the procedure.

What is described in the legislation, however, could ban all abortions. ''What this bill describes, albeit in non-medical terms, can be interpreted as any abortion,'' stated one of our physician members. ''Medicine is an art as much as it is a science; although there is a standard of care, each procedure—and indeed each woman—is different. The wording here could apply to any patient.'' The bill's language is too vague to be useful; in fact, it is so vague as to be harmful. It is intentionally unclear and deceptive.

2) Physicians need to have all medical options available in order to provide the best medical care possible.

Tying the hands of physicians endangers the health of patients. It is unethical and dangerous for legislators to dictate specific surgical procedures. Until a surgeon examines the patient, she does not necessarily know which technique or procedure would be in the patient's best interest. Banning procedures puts women's health at risk.

3) Politicians should not legislate medicine.

To do so would violate the sanctity and legality of the physician-patient relationship. The right to have an abortion is constitutionally-protected. To falsify scientific evidence in an attempt to deny women that right is unconscionable and dangerous.

The American College of Obstetricians and Gynecology, representing 45,000 ob-gyns, agrees: ''The intervention of legislative bodies into medical decisionmaking is inappropriate, ill advised, and dangerous.''

The American Medical Women's Association, representing 10,000 female physicians, is opposed to an abortion ban because it ''represents a serious impingement on the rights of physicians to determine appropriate medical management for individual patients.''

THE SCIENCE

We know that there is no such technique as ''partial birth'' abortion, and we believe this legislation is a thinly-veiled attempt to outlaw all abortions. Those supporting this legislation seem to want to confuse both legislators and the public about which abortion procedures are actually used. Since the greatest confusion seems to center around techniques that are used in the second and third trimesters, we will address those: dilation and evacuation (D&E), dilation and extraction (D&X), instillation, hysterectomy and hysterotomy (commonly known as a c-section).

Dilation and evacuation (D&E) is the standard approach for second-trimester abortions. The only difference between a D&E and a more common, first-trimester vacuum aspiration is that the cervix must be further dilated. Morbidity and mortality studies indicate that this surgical method is preferable to labor induction methods (instillation), hysterotomy and hysterectomy.

From the years 1972–76, labor induction procedures carried a maternal mortality rate of 16.5 (note: all numbers listed are out of 100,000); corresponding rate for D&E was 10.4. From 1977–82, labor induction fell to 6.8, but D&E dropped to 3.3. From 1983–87, induction methods had a 3.5 mortality rate, while D&E fell to 2.9. Although the difference between the methods shrank by the mid-1980s, the use of D&E had already quickly outpaced induction, thus altering the size of the sample.

Morbidity trends indicate that dilation and evacuation is much safer than labor induction procedures, and for women with certain medical conditions, e.g., coronary artery disease or asthma, labor induction can pose serious risks. Rates of major complications from labor induction were more than twice as high as those from D&E. There are instances of women who, after having failed induction, acquired infections necessitating emergency D&Es, which ultimately saved her fertility and, in some instances, her life. Hysterotomy and hysterectomy, moreover, carry a mortality rate seven times that of induction techniques and ten times that of D&E.

There is a psychological component which makes D&E preferable to labor induction; undergoing difficult, expensive and painful labor for up to two days is extremely emotionally and psychologically draining, much more so than a surgical procedure that can be done in a few hours under general or local anesthesia. Furthermore, labor induction does not always work: Between 15 and 30 percent of cases require surgery to complete the procedure. There is no question that D&E is the safest method of second-trimester abortion.

There is also a technique known as dilation and extraction (D&X). D&X is merely a variant of D&E. There is a dearth of data on D&X as it is an uncommon procedure. However, it is sometimes a physician's preferred

method of termination for a number of reasons: it offers a woman a chance to see the intact outcome of a desired pregnancy, thus speeding up the grieving process; it provides a greater chance of acquiring valuable information regarding hereditary illness or fetal anomaly; and there is a decreased risk of injury to the woman, as the procedure is quicker than induction and involves less use of sharp instruments in the uterus, providing a lesser chance of uterine perforations or tears and cervical lacerations.

It is important to note that these procedures are used at varying gestational ages. Neither a D&E nor a D&X is equivalent to a late-term abortion. D&E and D&X are used solely based on the size of the fetus, the health of the woman, and the physician's judgment, and the decision regarding which procedure to use is done on a case-by-case basis.

THE LEGISLATION

Because this legislation is so vague, it would outlaw D&E and D&X (and arguably techniques used in the first-trimester). Indeed, the Congressional findingsl—which go into detail, albeit in non-medical terms—do not remotely correlate with the language of the bill. This legislation is reckless. The outcome of its passage would undoubtedly be countless deaths and *irreversible damage* to thousands of women and families. We can safely assert that without D&E and D&X, that is, an enactment of S.3, we will be returning to the days when an unwanted pregnancy led women to death through illegal and unsafe procedures, self-inflicted abortions, uncontrollable infections and suicide.

The cadre of physicians who provide abortions should be honored, not vilified. They are heroes to millions of women, offering the opportunity of choice and freedom. We urge you to consider scientific data rather than partisan rhetoric when voting on such far-reaching public health legislation. We strongly oppose legislation intended to ban so-called ''partial birth'' abortion.

Sincerely,

NATALIE E. ROCHE, MD,
Assistant Professor of Obstetrics and Gynecology,
New Jersey Medical College.
GERSON WEISS, MD,
Professor and Chair, Department of Obstetrics, Gynecology and Women's Health,
New Jersey Medical College.

Mrs. BOXER. Mr. President, in fact, they say the so-called partial-birth abortion does not exist. There is no mention of the term ''partial-birth abortion'' in any medical literature.

Let me say once again for my colleagues that there is no mention of the term ''partial-birth abortion'' in any medical literature. Physicians are never taught a technique called partial-birth abortion and, therefore, are unable to medically define the procedure.

These physicians who are charged with protecting the life and health of women and babies—I might add that what is described in the legislation could ban all abortions. What this bill describes can be interpreted as any abortion.

We have a bill called the Partial-Birth Abortion Ban Act, and there is no such thing as partial-birth abortions. What this does is criminalize a medically necessary procedure. So let us get that on the table.

Why then would this be before us? I think the answer lies in this letter from OB–GYNs. It is an attempt to outlaw all abortions, to take away the rights of women to choose—not only to chip away at that right, but to take it away, and, by the way, criminalize abortions.

What follows from that? Women and doctors will be in jail. That is what follows from that. And if you read behind and between the lines here, when you hear my colleagues stand up, they have been fighting all their lives to outlaw abortion and to overturn Roe v. Wade. So let us get it on the table. That is what this is about.

There is a further quote in this letter that I think is worth mentioning.

The American College of Obstetricians and Gynecology, representing 45,000 OB–GYNs, agrees: ''The intervention of legislative bodies into medical decision-making is inappropriate, ill-advised and dangerous.''

Let me repeat that. These are the doctors who birth our children.

I find it very interesting because a lot of men come out here and talk about this, and women who have had pregnancies, who understand the relationship that you develop with your doctor—your doctor is your friend. Your doctor advises you. Your doctor tells you what your risks are. Your doctor, more than anything, wants a healthy child to be the end result of a pregnancy. That is why they go into medicine. People here would put them in jail if they tried to save your life by using a procedure that they know is the safest one in an emergency.

So repeating:

The American College of Obstetricians and Gynecology, representing 45,000 ob-gyn's, [says]: ''The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous.''

The American Medical Women's Association, women who go into healing—women who go into healing—what do they say, 10,000 female physicians? They are opposed to this ban because it ''represents a serious impingement on the rights of physicians to determine appropriate medical management for individual patients.''

So here we are, with everything else happening in the world, playing doctor—playing doctor—and putting women's lives at risk. It is very upsetting.

I go home every weekend. That is why I could not begin this debate on Saturday because I go home and I listen to my constituents. They come up to me—as I know my friend from Washington goes home every weekend—and they tug at my sleeve. Do you know what they are saying to me? Not ban medical procedures that doctors think might be necessary to save the life and health of a woman, no.

They are saying: Senator BOXER, we are worried. We have 250,000 troops ready to go to war. We are worried. Can we avoid war? We are worried. We are losing our retirement nest eggs. We are worried. We have lost our jobs.

I have a chart in the Chamber to just put this into context; that we are standing here debating a procedure that, if you take the definition of D&X, impacts one-tenth of 1 percent of all abortions. I do not happen to agree that is what the bill does, but let's take the advocates' point of view. They say it is this D&X, and that is one-tenth of 1 percent of all abortions, when these are the things people want us to work on:

In the last 2 years, 2.5 million private-sector jobs have disappeared. And I know some of those families. And 8.5 million people are unemployed in the United States of America; 1.1 million in California.

The PRESIDING OFFICER. Will the Senator suspend. The Chair advises the Senator she has used 9 minutes.

Mrs. BOXER. Thank you, Mr. President. I will continue. Will the Chair let me know when I have used 11 minutes, please?

The PRESIDING OFFICER. Will the Senator let us know, do you want us to let you know when you have used 11 more minutes or 2 more minutes?

Mrs. BOXER. Two additional minutes, and then I intend to yield back to my friend. And then Senator MURRAY will seek recognition.

The PRESIDING OFFICER. The Chair will advise the Senator when she has used 2 additional minutes.

The PRESIDING OFFICER. I thank the Chair.

Mrs. BOXER. Mr. President, people are unemployed. Mortgage foreclosures have reached a record high. Forty-one million Americans have no health insurance—no health insurance—whatsoever. Nine million children do not have health insurance coverage; 1.6 million children in California have no coverage.

Over 15 million Medicare beneficiaries have no prescription drug coverage. And 1.5 million violent crimes were reported in the U.S. in 2001. The crime rate is going up again, along with the unemployment rate.

We are talking about banning a medical procedure—or more than one, because the Supreme Court, by the way, in its ruling, claims the wording actually bans more than one procedure—we are doing that instead of this.

Mr. President, 13.5 million eligible children do not have child care assistance. And 280,000 children in California are on waiting lists to receive assistance.

There is a lot of passion about kids here. I share the passion. I share the love. I share the anxiety for those children. Let's do something to help them.

Mr. President, 15 million children have no access to afterschool programs, and the President cut the afterschool program by 40 percent.

One million children live within 1 mile of a toxic Superfund site, and the Superfund is in danger, and Superfund

cleanups are now cut in half. Talk about how it affects children. Why don't we do our job instead of trying to be doctors? If we do our job, we will have healthy children, get the parents health insurance, and the rest.

Mr. President, 17 million Americans have asthma; 6 million are children. I will tell you, if you go to any school and ask the kids to raise their hand, a third of them will say they have had asthma.

And 11.6 million children are living in poverty.

Mr. President, I ask for 30 more seconds, and then I will stop.

Bottom line: We are here in a situation where we are making a decision that is going to harm women. And through this debate I will show you the real faces of the women who have had this procedure. Some are very religious Catholics. Some are very conservative Republicans. And they are fighting against this with all their heart.

So I do look forward to this debate because, frankly, if we can take this love we all share for children and put it to good use for all of these things I have talked about, maybe something good will come out of it.

I thank the Chair very much and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, the Senator from California suggested this procedure may be the safest one in the case of an emergency. I do not have a medical degree, but I do have common sense. I cannot imagine that any doctor, faced with an emergency such as preeclampsia, or any other kind of emergency to the health of the mother, would give a woman a pill and send her home for 2 days and say: Come back to me in 2 days so I can abort your child. And that is exactly what the Senator from California would suggest is necessary in the case of an emergency.

Now, again, I do not have a medical degree. I agree with that. There will be a physician who does have a medical degree who will be here during this debate who will give you his opinion. That is our leader. But there is no way this procedure would ever be used in the case of an emergency. It is a 3-day procedure.

You ask the doctors. I do not know whether the Senator from California did. Ask the doctor who designed this procedure. And it was asked, in hearing after hearing after hearing, and letters. The doctor said he did this for his convenience because it took him 45 minutes to do your average late-term abortion, but the partial-birth abortion only took 15 minutes—15 minutes after 2 days of the mother being home having her cervix dilated over time. So, please.

And, by the way, I have had this conversation many times on this floor, where I have laid out very clearly this will never be used in the case of an emergency. You will find nothing anybody with a medical degree has ever written that says this will ever be used in the case of an emergency. But it does not fail that someone will come up and say: Well, you have to have this just in case of an emergency. You will never use this in the case of an emergency to protect a woman's health, life, or anything else. So let's just, if we can, try to stipulate to some facts, No. 1.

No. 2, the Senator from California said this may be a medically necessary procedure to save the health of the mother. That is a statement I have heard numerous times. She was reading from some letter, which I am going to be anxious to read because I have not seen it. But for the past 7 years, for anybody who has questioned this procedure, I have asked one question: Give me a for instance. Give me one example where this procedure, which is not taught in medical schools, which is not done in hospitals—let me repeat this—not done in hospitals; it is done in abortion clinics, designed by abortionists—tell me, under what circumstances would this be a preferable medical procedure?

Never—I underscore never—have I gotten a response. Why? Because there isn't an answer, other than never.

Yet it doesn't dissuade anybody from coming here for years and repeating the same line. Oh, we may need this. This may be medically necessary. Give me a for instance—just one. Give me one. Never—not once, ever—has someone come here and given a for instance of when this was medically necessary to preserve health, life, or anything. So I ask the Senator from California, who has exited the floor, to give me an example. I have been asking for years. I am a patient man.

Finally, she talks about how we are not doctors and we should not be here regulating medical procedures. I ask the Senator from California if she was a sponsor of a bill in which Congress banned, in 1996, a procedure known as female genital mutilation. I believe the Senator supported that legislation, as did I. It banned a medical procedure. I don't think the Senator from California came here and said we should not ban this procedure because we are not doctors. But we did ban that procedure.

By the way, is the procedure in the medical literature known as female genital mutilation? Answer: No. That is what Congress called it. Does Congress have a right to label things what we want? Answer: Yes. It may be more descriptive and real in describing what goes on than the medical term, which is mumbo jumbo in some cases to us lay people. So the medical term for female genital mutilation is infibulation.

If we came here and said we were going to ban that, everybody would look at me like I am looking at that word—having no familiarity with it. So we put it into plain language. Why? Because our job is to describe what we are doing. We don't want to keep secrets. We do enough of that. We want to accurately describe what is going on.

The Senator from California voted to ban a medical procedure that was named in the legislation differently than the ''technical name'' used in medicine—the very argument she is making against this legislation. Not that we have to be consistent in the Senate, but I suggest if you are going to make arguments about what we are doing here, don't do it from a glass-house. That is what the Senator from California is doing. I see a lot of broken glass on the floor.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, how much time do I have?

The PRESIDING OFFICER. Nine minutes.

Mrs. MURRAY. I yield myself 9 minutes.

Mr. President, I am dismayed and outraged that as we stand on the brink of war, as a quarter million of our finest soldiers gather in the Persian Gulf, the Senate is here this week discussing how to criminalize women's health choices. That is outrageous. I cannot believe the Senate leadership can find no more pressing national issue for the Senate to consider right now than abortion.

I cannot believe my colleagues are so out of touch with what is going on in America and the world that we should be debating this bill, S. 3. For anyone who hasn't had time to read a newspaper or talk to a constituent in the last week, I will read you some of the headlines. It will help demonstrate what else we are not doing right now.

This is from Friday's New York Times. Headline: ''U.S. Payrolls Fall Sharply as Jobless Rate Rises to 5.8 Percent.''

Employers shed more jobs last month at any time since the immediate aftermath of the September 11 terrorist attacks, the Labor Department reported today.

Saturday's Washington Post is even more alarming.

. . . [T]he report showed significant declines in a wide range of industries, including manufacturing, construction, retail trade, transportation, and some service.

How about this revelation: ''Chronic Budget Deficits Forecast,'' says the Washington Post.

The Federal Government . . . faces chronic deficits that only dramatic policy shifts can reverse. . . . Altogether, the CBO concluded, the President's policies would leave the Government with $2.7 trillion in debt through 2013, which the Government would not realize if Bush's proposals were rejected.

The Associated Press reported on Thursday that the Dow Jones fell to a 5-month low. If it drops 400 more points, it will hit a 5-year low.

On Wednesday, we learned that ''75 million Americans had no health insurance in 2001–02.''

Today, the New York Times reported, ''More Students Line Up at Financial Aid Offices.''

As the economic slump wears on, universities are awash in financial aid requests that dwarf those of earlier years, often from students who never thought of asking for help before and now find themselves scrambling for ways to stay in school.

On Saturday, the AP reported:

The Air Force Chief of Staff vowed to make the Air Force Academy safer for female cadets. The Air Force says it has investigated 54 reports of sexual assault since the academy began admitting women in 1976. Many of the alleged victims have said they were afraid to report the attacks because they feared they would be reprimanded.

Mr. President, this is a terrible situation. I commend Senators ALLARD and WARNER for their leadership in working to address that problem.

Unfortunately, the news overseas is no better than the news at home. The New York Times reported: ''North Korean Fliers Said To Have Sought Hostages.''

The North Korean fighter jets that intercepted an unarmed American sky plane over the Sea of Japan last weekend were trying to force the aircraft to land in North Korea and seize its crew, a senior defense official said today.

Today's Washington Post reports that ''Iran's Nuclear Program Speeds Ahead; Making ''Startling' Progress.''

U.S. officials . . . described Iran's progress last week as ''startling'' and ''eye-opening,'' so much so that intelligence agencies are being forced to dramatically shorten estimates for when Iran may acquire nuclear weapons. But equally striking is the extent to which Iran's breakthrough caught the United States and others by surprise.

Mr. President, these are the issues that I hear about when I am home in my State at the grocery store on Saturday morning. My constituents are terribly concerned about the economy, their jobs, their health care—or their lack of a job or health care. They ask about the war in Iraq and the threat posed by North Korea. My constituents have a vested interest in resolving the North Korean crisis, as do the Senators from California, since they have read news reports that the Western United States is potentially within range of a North Korean missile.

We are living in very trying times. It is challenges like these that test the strength of a nation and its leaders. But for the good of the country, shouldn't we now, more than ever, put aside the wedge politics and get on with the real business of the American people? That is what they elected us to do. That is why each one of us is here today.

Instead, we find ourselves on the eve of war facing a stagnant economy and the Senate is here debating a woman's right to choose.

Someone just tuning into C–SPAN right now might think this debate is taking place on another planet because it is dangerously out of sync with the real threats that are facing our Nation. It shows that nothing—not war, not the stagnant economy—will stop hardliners in Congress from trying to appease their political base by pushing an unconstitutional, deceptive, extreme agenda on American women.

But do you know what? If the Senate leadership wants to debate abortion on the eve of war, fine, bring it on, because it is time the American people see that they are using deceptive examples and misleading information to impose extreme, unconstitutional restrictions on a woman's health decision.

Throughout this debate, I want to show that the Republican proposal is based on misinformation and is skewed to undermine a woman's legal, constitutionally protected rights.

I am going to go a step further and offer an amendment that would actually reduce the number of abortions in America and ensure that low-income, pregnant women have access to health care that will reduce complications in their pregnancies and ensure healthy outcomes.

Like any debate on a sensitive issue, the debate on this measure is complicated. But it really comes down to one simple question: Who decides what is right for a woman's health? The woman and her doctor, or Senators she has never met? Who decides whether or not a woman will ever be able to have children? The woman herself, or a Senator who knows nothing about her?

When you ask Americans who they believe should be making health care decisions, the answer is overwhelmingly clear: The patient should decide.

We all bristle at the idea that an insurance company or an HMO would stand in the way of a doctor or patient making a decision about a medical test. Yet on this, the most sensitive and private and difficult decision a woman may ever face, the Senate is about to insert itself between a patient, her doctor, her family, and her faith.

This measure would gag a doctor who is about to offer a woman a choice in a potentially life-threatening or health-impairing decision. It would substitute a woman's own judgment about her life and her family for the judgment of the Senate leadership.

With all due respect, the Senate leadership does not know what is best for that woman, and neither do I, nor any other elected official. The Government should not be making a woman's health decisions for her. She should make them for herself, in consultation with her family, her doctor, and her faith.

Mr. President, I will have much more to say about this and the amendment I intend to offer, but again, I have to say that I find it so amazing this Senate would be so out of sync with the fear and the anxiety in this country not because of some late-term abortion bill that is brought out for political reasons, but because our country is on the edge of a war that could change things for a long time to come. We are on the edge of a war where we have thousands of young people standing ready to do what this President asks. We are on the edge of a war where no one knows what the consequences will be, and at the same time, at home, we are facing an economy that is truly becoming one in which many people fear for their job, their health care, their ability to send their kids to school, and the future of this country.

Those are the issues we should be debating tonight, Mr. President, not this issue. But we are here. We will debate it, and we will make the case that it is deceptive, it is extreme, and it is unconstitutional.

I thank the Chair, and I yield the floor. I retain the remainder of our time.

Mr. SANTORUM. Mr. President, how much time does each side have remaining?

The PRESIDING OFFICER. The Senator from Pennsylvania has 3 minutes 14 seconds. The Senator from California has 16 seconds.

Mr. SANTORUM. Mr. President, I ask the Senator from Washington if she would characterize something that has, in the most recent poll, 70 percent support among the American people as an extreme agenda item?

Mrs. MURRAY. Mr. President, I will make the case that this is deceptive, it is extreme, it is unconstitutional, and I will make that case over the following days.

Mr. SANTORUM. So the Senator believes something that has 70 percent support among the American people is extreme. OK, I am interested in hearing that.

Mrs. MURRAY. If the Senator asks me a question, I will be happy to respond.

Mr. SANTORUM. I think you did. You reiterated your position you believe this is an extreme piece of legislation even though 70 percent of the American people support it.

Mrs. MURRAY. Mr. President, I answer that I think most Americans do not know the reality of the language of the bill that is being presented to them, and I will make that case.

Mr. SANTORUM. This legislation has been around 7 years. This has been written about, described in detail in the national press, and I do not think we do the American public a great service by suggesting they cannot read and understand very clearly what this procedure is all about. I would argue probably the 30 percent who have not heard of it have not read in detail exactly what goes on. I make the other argument. But 70 percent is a pretty good start on our side.

Second, the Senator says the Government should not get involved in regulating the doctor-patient relationship when it comes to women's health. Did the Senator support the female genital mutilation bill which bans a medical procedure that interferes with the doctor-patient relationship between a woman and her doctor?

Mrs. MURRAY. That does not interfere with the doctor-patient relationship, I would argue with my colleague, and I am happy to have that debate. Senator REID from Nevada has been adamant about that issue, and I think it

is totally separate from what we are discussing this evening.

Mr. SANTORUM. This is a banned medical procedure that affects the reproductive system of a woman. I argue that you can make the case and you will ban things you agree with, but you do not want to ban things you do not agree with. That does not mean the Congress does not have a right, when we find something to be abhorrent, that we believe is not in the best interest of the medical profession and women in this country and particularly, obviously, the child in the process of being born, to step forward and ban what we believe are harmful and destructive procedures. That is what we have done in this case.

The Senator from Washington spent 90 percent of the time talking about anything but this bill, which leads me to the old saw when I was a lawyer: If you cannot argue the facts, argue the law; if you cannot argue the law, pound the table. In this case, we are pounding the table.

The PRESIDING OFFICER. The Senator from California has 16 seconds.

Mrs. BOXER. Mr. President, we are talking about polls. I will give you a very late poll. This is an L.A. Times poll of the Nation: 45 percent think we ought to be working on strengthening the economy; 28 percent, fighting terrorism; 26 percent, dealing with health care costs; at that time, 25 percent dealing with Iraq; 18 percent, protecting Social Security; 7 percent dealing with tax cuts; and 7 percent dealing with late-term abortion.

The people are exactly where the Senator from Washington says, but we are willing to debate this and we are looking forward to a good debate.

I yield the floor.

EXECUTIVE SESSION

NOMINATION OF GREGORY L. FROST TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO

The PRESIDING OFFICER. All time having expired, under the previous order, the Senate will go into executive session and proceed to the consideration of Executive Calendar No. 39, which the clerk will report.

The legislative clerk read the nomination of Gregory L. Frost, of Ohio, to be United States District Judge for the Southern District of Ohio.

The Senator from Ohio.

Mr. DEWINE. Mr. President, in a moment we will be voting on the nomination of Judge Gregory Frost to be a United States District Court Judge for the Southern District of Ohio. I have had the opportunity of knowing Judge Frost for many years. He is a man of great honor and integrity, and I ask my colleagues to vote for this very fine man. Judge Frost has been on the Licking County bench for 19 years, 7 as municipal court judge and 12 as common pleas court judge. Judge Frost will make an excellent district court judge.

I thank my colleagues.

Mr. LEAHY. Mr. President, tonight the Senate will vote to confirm Judge Gregory Lynn Frost to the United States District Court for the Southern District of Ohio. This will be the 105th confirmation of a lifetime Federal judicial appointment by President George W. Bush, the fifth so far this year. He is also the second District Court nominee confirmed for Ohio this year, following the confirmation of Judge Adams to the District Court for the Northern District last month, and the third within the last year. Last May, the Senate also confirmed Judge Thomas Rose to the vacancy on the U.S. District Court for the Southern District of Ohio. With the confirmations of Judge Frost, we will have filled all of the vacancies on the Federal trial courts in Ohio.

Federal judicial vacancies remain under the level—67—that Senator Hatch termed ''full employment'' in the Federal courts during the years before 2000 when President Clinton's nominees were being considered by the Republican majority in the Senate at a rate of 38 per year. Of course, last year the Democratic Senate majority proceeded to bring vacancies down by confirming 72 of President Bush's nominations, a rate almost double that maintained when the roles were reversed.

Judge Frost currently serves the people of Ohio as a Licking County Court Judge in Newark, Ohio. Judge Frost is a graduate of Wittenberg University (B.A. 1971) and Ohio Northern University Law School (J.D. 1974). He is strongly supported by Senator DEWINE, who shepherded this nomination through the Judiciary Committee and now to the Senate floor for prompt consideration.

After graduating from law school, Frost was appointed to be an Assistant Prosecuting Attorney for the Licking County Prosecuting Attorney's Office. In 1978, Frost joined the law firm of Schaller, Frost, Hostetter & Campbell in Newark, Ohio as a partner. He was appointed in 1979 by Mayor Chet Geller to be an Ohio Civil Service Commission clerk. In the early 1980's, he was elected a Licking Counting Municipal Court Judge. In 1990, Judge Frost was elected to a 6-year term on the Licking County Common Pleas Court and has been re-elected twice, most recently in November 2002. According to this Senate Questionnaire, he has no experience in Federal court.

Judge Frost is a current or former member of numerous charitable, civic and social organizations. Judge Frost is also a current member of the Newark Elks Club, which currently bases membership on being ''a citizen of the United States over the age of 21 who believes in God.'' Judge Frost states in his Senate Questionnaire that, for four years, he had been a member of the Newark Elks Club, along with the Newark Moose Lodge and Newark Maennerchor, however, he states that, ''when it became apparent that those organizations discriminated against women in their membership practices, I resigned. In 2000, I was asked to re-apply for membership in the Newark Elks Lodge. I advised that organization that I could not subscribe to their membership tenets as a result of their continued discrimination against women. In part, because of my position on this issue, I am proud to say that the Newark Elks Lodge has changed its practices and now permits women as full members.'' Judge Frost belongs to the Moundbuilders Country Club, a private golf club that does not discriminate in its membership.

The Committee received a letter of support for Judge Frost from the Ohio Employment Lawyers Association, a nonprofit organization that represents individual employees concerning employment and labor matters. The Ohio Employment Lawyers Association writes that Judge Frost ''is an example of how a jurist should set aside personal and partisan political beliefs to provide justice.'' Supporters of Judge Frost's nomination to the District Court also include the Ohio Academy of Trial Lawyers and Peter W. Hahn, a Democrat who has practiced before Judge Frost, writes that ''Judge Frost has the unique ability and temperament to adjudicate complex cases while maintaining civil and professional decorum both inside the courtroom and in chambers.''

I congratulate Judge Frost and his wife on his confirmation.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Gregory L. Frost, of Ohio, to be United States District Judge for the Southern District of Ohio? The clerk will call the roll.

The bill clerk called the roll.

Mr. FRIST. I announce that the Senator from Kentucky (Mr. MCCONNELL), the Senator from Alaska (Ms. MURKOWSKI), and the Senator from Oregon (Mr. SMITH) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), and the Senator from New York (Mr. SCHUMER) are necessarily absent.

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

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

The result was announced—yeas 91, nays 0, as follows:

[Rollcall Vote No. 44 Ex.]

YEAS—91

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

NOT VOTING—9

Biden	Kerry	Murkowski
Corzine	Lieberman	Schumer
Graham (FL)	McConnell	Smith

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President shall be immediately notified of the Senate's action.

The Senator from Nevada.

Mr. REID. Mr. President, I know the Senator from Ohio is here to make a statement. The Senator from Illinois wishes to make a unanimous consent request prior to the Senator from Ohio speaking.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, returning to Illinois this weekend, as I am sure my colleagues did in their home States, it is clear that we are in dire economic straits in America. It should be our highest priority, next to national defense and security, to put this economy back on track. I believe this is the moment to start the debate for an economic stimulus package that would create jobs and give businesses a chance.

Mr. REID. Mr. President, will the Senator withhold?

Mr. President, what is the parliamentary status of the Senate at this time?

The PRESIDING OFFICER. The Senate is in executive session.

Mr. REID. I am wondering if the Chair is about to announce that we are going to go back to the legislative matter that was before the Senate before the vote.

The PRESIDING OFFICER. There is no order to return to legislative session.

LEGISLATIVE SESSION

Mr. REID. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object, I want to ask my friend how long he intends to speak tonight? I will not object.

Mr. DEWINE. I had not intended to speak very long. I have about 15 minutes, approximately.

Mrs. BOXER. That is fine. I just wanted to know if we were going to be here for an hour or two. Thank you.

Mr. DEWINE. It might depend on how long my colleague speaks.

Mrs. BOXER. I will speak just as long as my friend speaks.

The PRESIDING OFFICER. Is there objection to the Senator's unanimous consent request?

Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST—S. 414

Mr. DURBIN. Mr. President, this last exchange shows that the Senate is alive and that a good samaritan never goes unpunished.

Having yielded for this exchange, I believe we are at a moment where I can make my unanimous consent request relevant to the economic stimulus.

I ask unanimous consent that the Senate begin consideration of Calendar No. 21, S. 414, a bill to provide for an economic stimulus package.

Mr. DEWINE. Objection.

The PRESIDING OFFICER. Is there objection? Objection is heard.

Mr. DURBIN. I thank the Chair.

PARTIAL-BIRTH ABORTION ACT OF 2003—Continued

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, let me return now to the debate in regard to the partial-birth abortion ban.

Let me thank my colleague from Pennsylvania, Senator SANTORUM, for his unending and unwavering and tireless efforts to put a permanent end to this horrific partial-birth abortion procedure. In the time we have served together in this body, he has never given up hope that Congress and this country would put an end to this barbaric procedure.

This Senate, this Congress, and this country must ban a procedure that is inhumane, that has absolutely no medical purpose, and that is, quite simply, morally reprehensible.

During the course of the debate on S. 3, the bill to ban partial-birth abortion, we will hear repeated descriptions of the barbaric nature of this procedure. I ask my colleagues, as difficult as it is, to listen to the description. There may be many arguments during this debate, but the description of what this procedure is will not be argued. There is no debate what it is. There is no debate about what takes place during a partial-birth abortion. I submit to my colleagues that the more you know about this procedure, the worse it is. The more you know about it, the easier it will be to vote to ban it.

We will hear repeated descriptions of this barbaric procedure. It is a procedure in which the abortionist pulls a living baby feet first out of the womb and into the birth canal except for the head which the abortionist purposely keeps lodged just inside the cervix. As Senator SANTORUM explained, the abortionist then punctures the base of the baby's skull with a long scissors-like surgical instrument and then inserts a tube into the wound removing the baby's brain with a powerful suction machine. This causes the skull to collapse, after which the abortionist completes the delivery of the now dead baby.

Mr. President and Members of the Senate, those are the essential facts. I can think of nothing more inhumane and indifferent to the human condition. Yet every year the tragic effect of this extreme indifference to human life becomes more and more apparent. It troubles me deeply that this is happening across this country and that it is happening in my home State of Ohio. In fact, it happens within 20 miles of my home.

I would like to take a few minutes now to talk about two particular partial-birth abortions that occurred in Ohio. They were two typical abortions—typical except for the way they turned out. These two tragedies that I am going to describe illustrate the gruesome facts and the evils of this procedure and show what can happen when it does not go according to the way the abortionist plans. Let me explain.

On April 6, 1999, in Dayton, OH, a woman entered the Dayton Medical Center to undergo a partial-birth abortion. This facility was and is operated by one Dr. Martin Haskell, one of the main providers of partial-birth abortion in the Nation. Usually the partial-birth abortion procedure takes place behind closed doors where it can be ignored—its morality left outside. In this particular case, the procedure was different. There was light shed upon it. This is what happened. This is why light was shown upon it.

This Dayton abortionist inserted a surgical instrument into the woman to dilate her cervix so the child could eventually be removed and then killed. This whole procedure usually takes 3 days.

The woman went home to Cincinnati expecting to return to Dayton for the completion of the procedure in 2 or 3 days. In this case, her cervix dilated too quickly, and as a result shortly after midnight she was admitted to Bethesda North Hospital in Cincinnati.

The child was born. A medical technician pointed out that the child was alive. But apparently the chances of survival were slim, and after 3 hours and 8 minutes the child died. The baby was named Hope.

Mr. President and Members of the Senate, on the death certificate, of course, is a space for cause of death—''Method of Death.'' There it was written in the case of Baby Hope, ''Method

of Death: Natural.'' That, of course, is simply not true. There is nothing natural about the events that led to the death of this tiny little child because Baby Hope did not die of natural causes.

Baby Hope was the victim of a barbaric procedure that is opposed by the vast majority of the American people. In fact, the Gallup poll conducted in January of this year shows that 70 percent of the American people want to see this procedure permanently banned because the American people know it is wrong. They feel strongly about it. And we, as a Senate, and as Members of Congress, I believe, should be listening to the American people.

The death of Baby Hope did not take place behind the closed doors of an abortion clinic. That death took place in public—in a hospital dedicated to saving lives, not taking them.

This episode reminds us of the brutal reality and tragedy of what partial-birth abortion really is. Because what it really is is the killing—the killing—of a baby, plain and simple. And almost to underscore the inhumanity of this procedure, 4 months later it happened again, again in Ohio, with the same abortionist. This time, though, something quite different occurred.

Once again, in Dayton, OH, this time on August 18, 1999, a woman who was 25 weeks pregnant went in to the same Dr. Haskell's office for a partial-birth abortion. As usual, the abortionist performed the preparatory steps for the barbaric procedure by dilating the mother's cervix. The next day, she went into labor, and was rushed to Good Samaritan Hospital—again, not what was expected. Again, the procedure normally takes 3 whole days. But she was rushed into labor.

But this time, however, despite the massive trauma to this baby's environment, a miracle occurred. And by the grace of God, this little baby survived. So she now is called ''Baby Grace.''

I am appalled by the fact that both of these heinous partial-birth abortion attempts occurred in this great country of ours, and occurred in my home State of Ohio.

When I think about the brutal death of Baby Hope and then ponder the miracle of Baby Grace, I am confronted with the question, Why can't we just allow these babies to live?

Opponents of the ban on this procedure argue that this procedure is necessary to protect the health of women. And yet, the American Medical Association has said this procedure is never medically necessary. In fact, many physicians have found the procedure itself can pose immediate and significant risk to a woman's health and future fertility. Clearly, the babies did not have to be killed in the Ohio cases I cited, no. The two babies I cited were both born alive. One was able to live and one tragically died.

Why, Mr. President, why, Members of the Senate, does the baby have to be killed? Why?

Opponents of this legislation say this procedure is only used in emergency situations—you will hear those words used time and time again: emergency situations—when women's lives are in danger. And yet it seems very strange that in an emergency, a 3-day procedure would be used and the mother would be sent home. If it was truly an emergency, why would the doctor pick a procedure that would take 3 days? Why would the woman consent to a 3-day procedure if it was truly an emergency? It is not an emergency. And the testimony we have heard, the testimony that has been taken in our committee in the past, has clearly indicated this procedure is never medically indicated—never medically indicated.

Nevertheless, even abortionists say the vast majority of partial-birth abortions are elective. Dr. Haskell, the Ohio abortionist, said this:

> And I'll be quite frank; most of my abortions are elective in that 20–24 week range.

This is Dr. Haskell. Let me quote him again:

> And I'll be quite frank; most of my abortions are elective in that 20–24 week range.

''Elective.''

Opponents of this bill say this procedure is necessary when a fetus is abnormal. I do not believe the condition of a fetus ever warrants killing it. I do not believe that. But even abortionists and some opponents of this ban agree that most partial-birth abortions involve healthy fetuses. And that is what the statistics clearly show.

The inventor of this procedure himself, the late Dr. James McMahon, said:

> Gee, it's too bad that this child couldn't be adopted.

Opponents of this bill contend that the partial birth procedure is rare, yet a report released just this past January suggests the number of partial-birth abortions has, in fact, tripled, accounting for an estimated 2,200 abortions in the year 2000.

I have heard it stated on the floor that is just a small fraction of the number of abortions that are performed in this country every year. That may very well be true. Still, statistics would indicate, if we believe the previous statistics, that is a significant increase in the number of partial-birth abortions. And still, whatever the total number of abortions is in this country, that is still 2,200 abortions that occurred in this very barbaric manner in 1 year.

I would again call my colleagues' attention to the description of this procedure. And again, I remind my colleagues that no one—no one—will come to this floor and deny what a partial-birth abortion is. No one will come here and say what Senator SANTORUM has said, what I have said, what Senator BROWNBACK will say, what any of us are saying about what this procedure is really like, is a lie or is not true. It is what it is, and no one can deny it.

And so 2,200 of these children had to suffer that agony of a partial-birth abortion. That is what the facts are. And there are many people who believe it is underreported. But we know of at least that many.

Opponents say a ban on partial-birth abortion violates Roe v. Wade, and they conclude it must be unconstitutional. But, as anyone who has read that case knows, Roe declined to consider the constitutionality of the part of the Texas statute banning the killing of a child in the process of delivery. Moreover, the Supreme Court again declined to decide this issue in Planned Parenthood v. Casey.

Again, I ask, why does the baby have to be killed? Why?

Opponents say this bill is unconstitutional because it does not have a health exception. But the American Medical Association itself has stated:

> There is no health reason for this procedure.

''There is no health reason for this procedure.''

> In fact, there is ample testimony to show that all of the health consequences are more severe for this procedure than any other procedure used.

The AMA has also said:

> The partial delivery of a living fetus for the purpose of killing it outside the womb is ethically offensive to most Americans and physicians.

I ask my colleagues who wish to continue to allow this heinous act, again, why does the baby have to be killed? Why?

Mr. President and Members of the Senate, why do babies, 3 inches away from their first breath, have to die?

Something is terribly wrong. With the advent of modern technology, we can sustain young life in ways we could not just a few short years ago. We sustain children much younger than the children who are being killed in partial-birth abortions, and they are in hospitals throughout this country. Most of us on the Senate floor have seen these children. And we have seen people, very gallantly, in hospitals fighting to save their lives every day.

Unfortunately, we have created more and more savage methods of killing our young at the same time we are creating wonderful ways to try to continue to keep children alive and save lives.

I think we are really destroying ourselves by not admitting as a society that partial-birth abortion is an evil against humanity. I believe there will be more and more horrible consequences for our Nation if we do not ban this cruel procedure.

As Frederick Douglass stated more than 100 years ago:

> Find out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong which will be imposed upon them, and these will continue till they are resisted. . . .

Mr. President, we must stop and ask: To what depths has the American conscience sunk? When it comes to abortion, is there nothing to which we will say: Enough, enough, no, stop; we will

not tolerate this. At this point, we will draw the line. At this point, we will go no further.

Partial-birth abortion is a very clear matter of right and wrong, good versus evil. It is my prayer that there will come a day when my colleagues, such as Senator SANTORUM and the rest of us who have fought this battle, won't have to come to the floor and talk about partial-birth abortion. Nobody wants to talk about this. But until that day comes, when this procedure has been outlawed in our country once and for all, we will have to continue to come to the floor and talk about it. Now is the time to ban this very evil procedure. It is the right thing to do.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, the question asked very eloquently by my friend is: How low have we sunk? I say pretty low, when we have a bill before us that doesn't even have an exception for the health of a woman. I get caught up in my throat when I think about it. Women like Viki Wilson, women who are religious, women who desperately want children, women who were told, as she was—and I will read her story—that if she didn't have a procedure outlawed in this bill, she could never have a child again, and worse. So I think we sink pretty low when we write a bill that doesn't even have an exception that has been the law of this land since 1973 in a Supreme Court case that is still upheld, which says, yes, we can act to limit abortion, but we always have to make an exception for the life and the health of a woman. That is my position.

I have said on this floor, along with many of my pro-choice colleagues who are Democrats and Republicans, we would ban all late-term abortions, except for the life and health of the woman. My view is anyone who comes to this floor to ban a medical procedure that could save the life and health of a woman and doesn't have that exception, is sinking very low. It shows a lack of respect for women, a lack of respect for their lives, their future ability to have children, to love children, and for their future as healthy women.

I will show you a list of problems that could develop in women if they don't have the procedures that are banned in this bill. Show me that list of what could happen. This comes from various physician letters, which I will ask to print in the RECORD later in the debate. This is what can happen to women if there is no health exception in the bill, which there is not. There are 15 pages of findings, but no health exceptions.

The Supreme Court already ruled on this very same bill—the Nebraska law—and sent it back and said you cannot come to us with a bill that doesn't make an exception for the health of a woman. Why? Because they see that a woman could hemorrhage and die; a woman's uterus could rupture and she could die; a woman could get a blood clot and she could die; she could have an embolism and she could die; she could have a stroke and she could die; she could have damage to nearby organs and, in some cases, she would have to live paralyzed.

How low have we sunk that we cannot make a exception for the health of a woman? Pretty low. Pretty low. When I started this debate, I made the point that there is no such thing as partial-birth abortion. It is a phrase that is used by the proponents of this bill in order to essentially make abortion illegal one procedure at a time. Every one of my friends who is on the floor time and time again, if you ask them, they will be honest and they will say they don't like Roe v. Wade; they don't think abortion should be legal; it ought to be criminalized. This is the way they are going—one procedure at a time.

By the way, if you read the Supreme Court case—put up the chart that shows what the Court said. We are talking about more than one procedure banned, although our friends will tell you it is one procedure. Look at what the case says.

First of all, there is no health exception. I will go to this chart. The Supreme Court said in the Nebraska case, a legally identical bill:

> Even if the statute's basic aim is to ban D and X, its language makes clear it also covers a much broader category of procedures.

So let there be no mistake, those voting for this bill are not just outlawing one procedure, but many procedures, which fits right into the agenda of my friends who are here tonight and who will be here in the next several days debating with us, because they want no abortion—even though, if you ask the American people, should a woman have a right to choose, should Government stay out of that private decision, a vast majority will say yes, because it is out of respect for women to make a decision with their physician and with their God. It is a decision that has a lot of components to it, one they discuss with their families. It is a tough decision. But I don't personally think any Senator ought to be put in the bedroom of any of our people making these decisions, or in a doctor's office.

If my daughter had a problem pregnancy and her health was threatened, just as Viki Wilson's was, I don't think that I would go to a U.S. Senator—not even the one who is a doctor, because he is a heart surgeon. If she had a heart problem, absolutely. I think it is important to see what the American Medical Association says about this. I say to my friends on the other side of the aisle that they are very holier than thou about this and they have every right to their opinions. They do not know more than doctors. It is not their job to protect the life and health of women. They don't even know what they are talking about. Listen to the AMA. The AMA, American Medical Association, has previously stated their opposition to this bill:

> We oppose legislation that would criminalize a medical practice or procedure. Since S. 3 includes a provision that would impose a criminal penalty on physicians performing intact dilation extraction, the AMA does not support this bill.

Even though they don't like the procedure, they would not support this bill. The letters I have had printed in the RECORD from practicing OB/GYNs—those are the doctors women go to. They don't go to ''Dr. Santorum,'' they don't go to ''Dr. DeWine,'' they don't go to ''Dr. Boxer,'' they don't go to ''Dr. Murray;'' they go to their OB/GYN.

What do they say?

> We urge you to stand in defense of women's reproductive health and vote against S. 3, legislation regarding so-called partial-birth abortion.

There is no mention of the term ''partial-birth abortion'' in any medical literature. There is no such term, I say to my friends. Physicians are never taught a technique called ''partial-birth abortion'' so, therefore, they are unable to medically define it. What is described in the legislation, they say, could ban all abortions.

Why don't my colleagues just come out and say, ''Let's ban all abortions''? Let's have that debate. You lose it, at least with the American people. I do not know how the votes line up here. We are going to have a chance to vote on whether to overturn Roe v. Wade. We are going to offer that up. We will have a debate about that. Let's see where people stand on that one. But to do it in this way, making up a term and doing it in a way that is so vague that the Supreme Court basically says it covers a much broader category of procedures, is absolutely a fraud on the people. I do not know what else to call it. The Supreme Court said in an identical bill it is far broader than just one procedure.

What did it say about the health of a woman? It also said:

> Our cases have repeatedly invalidated statutes that in the process of regulating the methods of abortion, imposed significant health risks.

In other words, there is no health exception in this bill. Senator SANTORUM added 15 pages of language, but the operative part of the bill makes no exception for health.

Let's be clear on what we are talking about. First of all, a partial-birth abortion, which there is none, is a vague term which could ban all abortions and many abortions. There is no health exception whatsoever in the bill. Without a health exception, if a doctor fears a hemorrhage or a uterine rupture, or a blood clot or an embolism or a stroke or damage to nearby organs or even paralysis, it is not enough for my friends on the other side. How low have we sunk—I want to talk about that. If your daughter is told if she does not get this particular procedure, she may be paralyzed for life and you will not make an exception, how far have we sunk? I think that is a fair question.

The debate we are having is not the real debate. The real debate is outlawing abortion completely and doing it one procedure at a time and making people think this particular procedure, A, is real, which there is no such thing as a partial-birth abortion—it is not in any dictionary; it is made up—and B, making them think you really are banning one procedure when the Supreme Court said, no, there are many procedures and maybe all abortions are banned.

So why not come here like a man—and I say ''a man'' because it is the men on the other side who brought this to us. Maybe we will have some women debating it tomorrow, but so far we have seen the same men come down here, and they are saying they are after this partial-birth abortion when we know every one of them wants to ban all abortions, does not believe in a woman's right to choose, wants to criminalize women who would have an abortion, criminalize doctors, and have a constitutional amendment to make it illegal.

I remember those days. Women died during those days. How low have we sunk? Women were made infertile in those days. All the points we see here—serious health consequences of banning safe procedures—all of that I remember in those days. Finally, the Supreme Court got enlightened in 1973 and said: Government, keep your nose out of this; it is a health issue; and if you legislate to clamp down on abortions in the late term—which, by the way, I agree with, but always have a life and health exception so we do not force women into a situation where they can lose their ability to function for their families.

Let's put Viki's picture up again. I will tell you her story. She says:

I urge you to oppose S. 3. I understand this bill is very broad and would ban a wide range of abortion procedures. Mine is one example of the many families that could be harmed by legislation like this.

In the spring of 1994, I was pregnant and expecting Abigail, my third child, on Mother's Day. The nursery was ready and our family was ecstatic. My husband, Bill, an emergency room physician, had delivered our other children and he would do it again this time. John, our older, would cut the cord. Katie, our younger, would be the first to hold the baby. Abigail had already become an important part of our family.

At 36 weeks of pregnancy, however, all of our dreams and happy expectations came crashing down around us.

This is Viki. She says:

My doctor ordered an ultrasound and detected what all of my previous prenatal testing had failed to detect. Two-thirds of my daughter's brain had formed outside her skull. What I thought were big healthy, strong movements were, in fact, seizures. My doctor sent me to several specialists. We were in a desperate attempt to find a way to save her.

''A desperate attempt to find a way to save her,'' and yet my colleagues come down here and make everyone believe that these women who have had this procedure were callous about it. ''A desperate attempt to save her.''

Everyone agreed she would not survive outside my body. They also feared that as the pregnancy progressed before I went into labor, she would die from the increased compression in her brain. The doctors feared that my uterus might rupture in the birthing process, rendering me sterile. The doctor recommended against C section because they could not justify the risks to my health.

What were the risks to her health? Let's look at it again and again and again. What could have happened to Viki if she had to live under this cruel law that has no health exception? She could have hemorrhaged. Her uterus could have ruptured. She could have had blood clots, an embolism, or a stroke. She could have become paralyzed. Her organs nearby could have been damaged.

When people come down here and say ''how low have we sunk,'' I agree: How low have we sunk to have a bill come before this body with a name that is not even a real procedure, that could outlaw a broad range of procedures, and that makes no exception for a woman's health and could consign her to live the rest of her life, if she survives it, in a horrific situation which could be so detrimental to her other children.

I see my colleague has come to the floor. I am not going to go on much longer because I have a lot more to say on this and a lot more cases to share with my colleagues tomorrow. We have pictures and pictures and pictures of women and their children, women who are deeply religious, women who tried every way to save their pregnancy, women who wanted to live to try to have another child.

Is that a crime? Is that being made a crime? Yes, it is being made a crime. I feel heavy in my heart that with all of the issues that face us, 250,000 troops—talk about killing. I have 5,000 National Guard on the border of Iraq, with another couple of thousand having been notified. I have young people over there, people who have left their families, who are going to face God knows what, and we are debating a procedure that would be banned, which does not even make an exception for the health of a woman such as Viki, and the many others I will bring to light.

It is so callous. We have children who are uninsured who cannot even get medicine. We are not talking about that. We have the most unemployed people we have seen in decades, the worst economy we have seen in 50 years. The stock market plunged again today, and people have to work another 5 or 10 years because their dreams are gone. And we are talking about banning a procedure without making a health exception. I am amazed.

Debate it we will, and we will offer amendments to try to bring health to women, to children, and to women who are pregnant. We hope our friends will be as eloquent in supporting those as they are eloquent tonight.

We will have the chance to speak out on Roe v. Wade and see how many of our colleagues really support a woman's right to choose, as the Supreme Court laid it out, in the early stages of a pregnancy. And, yes, in the later stages one may not have an abortion unless it is to save the life and health of a woman. That is the law.

This will set a dangerous precedent. It will send a message that the health of the mother does not matter. Every time I put up a picture, my friends will say, because they did it last time, oh, these women, they could have had it, there is no problem with them. Wrong. These women have come to us and told us they had the procedure that my colleagues want to ban, and had they not had it, they might not have lived to tell the tale or they would have had serious adverse health consequences.

So how low have we come? That is for the people of America to decide. As far as I am concerned, anyone who comes to this floor and puts forward a bill that is so callous as to say that if a woman's health is threatened and she could suffer one of these terrible consequences, she cannot even have a procedure that her OB/GYN says she needs to have—it is callous, and I am going to speak out against it. I hope we will finish this in due course, have a good debate and move on, but we will be heard on our side. We did not bring this up, but we will be heard.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I see my colleague from Ohio is in the Chamber so I will not speak very long. I do want to very briefly respond to my friend and colleague from California, if I may. I know we will have ample time the remainder of the week to debate this issue. She is an excellent debater, and I look forward to the chance of continuing this dialogue and this debate as we go forward. I do want to respond very briefly to a couple of her comments.

Quite candidly, listening to my colleague from California, I almost get the impression that partial-birth abortion does not exist in this country or that no one could really define it or even know it when it exists. That is not true. The fact is that people know what it is. They know it takes place. It is counted, at least in one State. There are providers who say: I provide partial-birth abortion. So it is defined, and it is defined very specifically in this bill.

Senator SANTORUM has worked very hard to have a definition that is a precise definition, and I might say that it is a more precise definition, a better definition, a definition that conforms to what the Supreme Court has said, a better definition than the previous bill taken up on the Senate floor. It is taking into consideration what the Supreme Court has said. I will read a portion of that definition to my colleagues.

As used in this section, 1, the term ''partial-birth abortion'' means an abortion in

which, A, the person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of fetal trunk past the navel is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and, B, performs the overt act, other than completion of delivery, that kills the partially delivered living fetus.

Then it continues on and defines physician, et cetera. But that is the key part. That is a very precise definition. So I would reject the argument that this is vague. It is not vague. It is very well understood.

Turning to another point my colleague from California made, that has to do with the health of the mother, we had the opportunity to listen to a great deal of testimony in the past, and we have also had a lot of people who have talked about this issue. We will have the opportunity to debate this tomorrow and the days after. I am not going to quote a lot of people tonight because of the time, but the testimony has been very clear that this is not ever medically indicated. It is not something that is done in an emergency. One does not perform a procedure that takes 3 days in an emergency; something else is done. An emergency is not a 3-day procedure. Make no mistake about it, all the testimony has been that the partial-birth abortion takes 3 days. That is not an emergency procedure. It simply is not.

Let me quote former Surgeon General Dr. C. Everett Koop:

Partial-birth abortion is never medically necessary to protect a mother's health or her fertility. On the contrary, this procedure can pose a significant threat to both.

Dr. Warren Hern, OB/GYN:

I have very serious reservations about this procedure. You really cannot defend it. I would dispute any statement that this is the safest procedure to use.

The physicians Ad Hoc Coalition For Truth said the following:

Given the many potential risks the procedure entails the mother, far from being medically indicated, partial-birth abortion is actually contra-indicated.

Dr. Pamela Smith, OB/GYN, said the following:

Partial birth is, in fact, a public health hazard in regards to women. Medically, I would contend, of all the abortion techniques available to a woman, this is the worst one which could be recommended in the situation of a mother's health.

Dr. Dominic Casanova, OB/GYN:

This procedure is totally unnecessary and dangerous. If it becomes necessary to evacuate a uterus beyond 20 weeks gestation, there is a recognized standard method taught in all OB/GYN training programs which involves another procedure.

It goes on and on. I will not take the Senate's time tonight. We will have an opportunity tomorrow to debate this. This is not medically indicated. The testimony has been abundantly clear. This is not a procedure that is ever used for the health of the mother.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I take a minute to rebut my friend before I listen to my colleague from Ohio. I find it very interesting that because a procedure could take 3 days, it is not an emergency. If my daughter is undergoing a procedure and on the third day she dies, because perhaps something went wrong, she was in an emergency, even though it took 3 days. If someone has cancer and rushes into the hospital and it may take some intensive work over a period of days to save their life, the procedures used there are used because this is an emergency. To say it is not an emergency because it took 3 days to try to save a woman's life is, on its face, counterintuitive.

I say again, my friend, with all due respect, absolutely knows this procedure he wants to ban without exception for health, he knows it is not the safest procedure.

Well, I don't know what medical school he went to. Listen to the physicians. They are writing to us. They are stating over and over again, don't tie our hands; we may be forced to use this procedure. Don't tie our hands; a woman can suffer irreparable harm.

I would love to believe in everything my friend——

Mr. DEWINE. Will the Senator yield?

Mrs. BOXER. I'm sorry?

Mr. DEWINE. Will the Senator yield?

Mrs. BOXER. I will.

Mr. DEWINE. Does the Senator from California dispute Dr. Haskell's statement that the vast majority of these abortions are elective?

Mrs. BOXER. I have not read what my friend is reading from. I wonder whether he has read what the obstetricians and gynecologists——

Mr. DEWINE. Can my colleague answer that question?

Mrs. BOXER. Send it over to me. I will be glad to. You are asking, do I agree with this doctor. I don't know who he is. I am telling you what I am agreeing with. I agree with the OB/GYN, the women physicians, the physicians who were dealing with these difficult pregnancies all the time.

But I am happy—the time is mine, if I might, I say to my friend.

Mr. DEWINE. You will not yield for another question. I understand.

Mrs. BOXER. I didn't say I would not yield for another question.

I asked you to send over the letter to which you are referring so I can answer the question with intelligence. I have not seen the letter. I am not asking my friend to comment on the OB/GYN because I don't know that he has seen it. I don't think that is right to do in an intelligent debate. I am happy to look at it and at that time I will be happy to answer the question.

We have a situation where we are being told by doctors over and over again, thousands of doctors, 45,000 doctors, that they may well have to use this procedure. All they want is a health exception. My friends are not interested in giving us a health exception. They will have a chance to vote it down because we will offer up an exception that talks about the terrible things that can happen to a woman. If they want to vote it down and say no, that is fine. They have to live with that. That is fine.

I don't want to have to face a Viki Wilson. I don't want to have to face the women who have told me this procedure that they want to ban saved them. I don't want to face them when they are sitting in a wheelchair and paralyzed or suffering from a stroke because my friends decided we were sinking so low that we would fight for an exception for health. Imagine. Just imagine.

I rise tonight, and I will do so at every turn, because the facts simply are not on the side of those who want to get this through the Senate and outlaw a set of procedures the court said—by the way, my friend argues that the bill took care of the problem; it is very specific.

I ask unanimous consent to have printed in the RECORD a legal analysis by the Center for Reproductive Rights which says very clearly that this bill is legally identical to the one that the court found unconstitutional.

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

CENTER FOR REPRODUCTIVE RIGHTS,
Washington, DC, March 6, 2003.

Hon. BARBARA BOXER,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOXER: On June 29, 2000, in Stenberg v. Carhart, 530 U.S. 914 (2000), the U.S. Supreme Court held that Nebraska's sweeping ban on abortion—misleadingly labeled a ban on so-called ''partial-birth abortion''—was unconstitutional. I was one of the attorneys who represented LeRoy Carhart, M.D., the Nebraska physician who challenged the ban in that case.

In Carhart, the Court held that Nebraska's abortion ban was unconstitutional for two reasons. First, the Court held that the ban did not prohibit only one type of abortion procedure, but instead outlawed several methods, including the safest and ''most commonly used method for performing previability second trimester abortions,'' Carhart, 530 U.S. at 945, and therefore constituted an undue burden on women's right to choose. Second, the Court held that the Nebraska ban was unconstitutional because it failed to include an exception for women's health. The Court noted that ''a State may promote but not endanger a woman's health when it regulates the methods of abortion'' and that ''the absence of a health exception will place women at an unnecessary risk of tragic health consequences.'' Carhart, 530 U.S. at 931, 937.

The new federal bill (H.R. 760, S. 3) contains the same two flaws. Like the Nebraska law, the federal bill fails to limit the stage of pregnancy to which the bill's provisions apply, so the ban could criminalize abortions throughout pregnancy (nor just post-viability or ''late term'' abortions, as the bill's sponsors often claim), and the definition of ''partial birth abortion'' in the bill is broad enough to criminalize numerous safe abortion procedures, including the safest and most commonly used method for performing

abortions early in the second trimester, the D&E method (not just one abortion procedure, as the bill's sponsors misleadingly imply). Moreover, the federal bill fails to limit its prohibitions to abortions involving an ''intact'' fetus, fails to explicitly exclude the D & E technique or the suction curettage abortion method from the law's prohibitions, and fails to include definitions of key terms such as ''living'' or ''completion of delivery.'' Like the Nebraska law, the federal bill also fails to include the constitutionally mandated health exception. Therefore, the federal bill is unconstitutional for the same reasons as the Nebraska law struck down in Carhart.

Because the U.S. Supreme Court has already struck down legislation containing the same constitutional flaws contained in the new federal bills, these bills can only be seen as a direct attack on the Supreme Court's decision, on the safest and most common abortion procedures in the second trimester, and on the protection for women's health that have been consistently reaffirmed throughout three decades of abortion jurisprudence.

Please feel free to contact me with any further inquiries.

Sincerely,

PRISCILLA SMITH,
Director.

Mrs. BOXER. My friend did say, and I appreciate that, that he heard a lot of witnesses come forward to talk about this. That was a couple of years ago. For some reason, they have the time to do this but they did not have the time to send this bill to the Judiciary Committee where they could have looked at this issue.

This is an amazing situation. We had a Supreme Court that argues that the Stenberg case, the legally identical bill to this, is unconstitutional on its face on two grounds—no health exception and a very vague definition. Here it is. Unconstitutional. This is what the Supreme Court said in a legally identical bill, and I have just placed in the RECORD a letter from the attorney who argued that case. She read the Santorum bill and says it is legally identical to the case that was declared unconstitutional. This is what the Court said. Unconstitutional because it put an undue burden on women because the definition is vague. Undue burden—very important words. You cannot put an undue burden on a woman because abortion under Roe is legal and in the late stages it is not legal if the State says it isn't, except for life and health. But it puts an undue burden because we don't know at what stage the woman is going to get this abortion and whether this procedure applies to it or not.

No exception to protect a woman's health, that is the one that breaks my heart. After all of this, the Court sending it back, please make an exception for women's health, my friends do not even have it in their heart to make an exception for a woman's health. I find it difficult. So S. 3, the bill before us, and Stenberg are legally identical according to the lawyers who won the case.

I argue the life exception is very narrow. It does not just say you can use it if a woman's life is threatened. It says the woman has to have this preexisting condition. I argue that.

But clearly my purpose tonight is to say to my friends on the other side, as we offer these amendments on women's health, be with us; as we offer these amendments on children's health, be with us; as we offer these amendments on prenatal care, be with us. Because you care about children, that is why you are here. So be with us. Be with us on these.

I say be with us on Roe v. Wade. Roe v. Wade is a modest decision that said to government, take your nose outside of privacy. You cannot make a decision in an early stage of a pregnancy. Be with us on that. Be with us if we suggest that the Judiciary Committee ought to take a look at this in light of the Stenberg case. We offer our hand to you. Be with us when Senator DURBIN offers a health exception. If you care about women and their families, be with us when we say make an exception if a woman is told she could be paralyzed if she does not have this or be prepared to face the consequences if this does become the law of the land and the Supreme Court does change. It is bringing pain and suffering to a lot of our families in America.

We will give you the chance to offer up these amendments. We look forward to joining with you. We hope we will win a couple here. We have a few people already on your side of the aisle who are pro-choice who are going to be with us on some of these amendments. We hope we can expand that. We hope we can have a good vote on the health exception. I think we are getting close to winning that one. That would be a good day for women.

Just remember the most important thing of all: This is about real people, real women like Viki. She is just one. These are religious women, caring women, loving women, who wanted these babies more than anyone could say but who knew if they didn't have the procedure that you want to ban, they could well die, be made infertile, have a blood clot, be paralyzed. We can't do this to women. We should not do this. We should respect women.

We should act as Senators, not OB/GYNs. I think it is important.

In closing, I want to say my friend, Senator SANTORUM, when I was out of the Chamber, said: Well, Senator BOXER said we should not ban procedures, but she voted to ban a medical procedure that would have allowed women's genitals to be mutilated.

I just want to set the record straight. You are darned right I did. That is not a medical procedure; that is torture. That is torture. We are talking here about a medical procedure which doctors say is necessary to save the life and health of a woman in certain abortions. That's quite different. So I wanted to set the record straight.

This debate is emotional. This debate is difficult. There is no doubt about it. But I am so proud to stand tonight, to call on my friends to be honest about what their true goal is. If it is to ban one procedure, then name it in the bill. They do not do that. It is vague. Therefore, according to the Court, it could ban all abortion. That is what the Supreme Court said.

If that is what they are about, then be man enough to come over here and say they believe abortion should be banned, and then let's have at it and talk about the right of families, of women, to make a decision like this—with their doctor, with their God, with their conscience, with their family. But I say: Not with their Senator. I don't think I have that right. I have more humility than that.

I try hard to be a good Senator. I try hard. I come here, I try to fight for the American dream for people. I fight for children, fight for families, fight for jobs. God knows we have trouble in this land. We have troubles in this land. Retirements are up in smoke. People are being forced to work longer and harder. I mean, there are a lot of issues that adversely impact on children and their families. But we will stand here and we will have a point/counterpoint as long as they want to do that.

I thank you and yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Ohio.

Mr. DEWINE. Mr. President, let me just briefly respond on my own time now and maybe lay a little foundation.

The PRESIDING OFFICER. There is no time. The Senator from Ohio has the floor.

Mr. DEWINE. Let me lay a little foundation for my previous question that I asked my colleague from California. I will send over to her the quote from Dr. Haskell. But to explain to her who Dr. Haskell is, Dr. Haskell is probably the foremost—I would say notorious—partial-birth abortion provider in this country. He operates in my home State, near my hometown. He operates in Dayton, OH. He performs many partial-birth abortions.

The quote I have is as follows. I will read the quote that I have. Dr. Martin Haskell indicates he:

> . . . routinely does this procedure on all patients, 20 to 24 weeks pregnant, except on women—

He gives some exceptions.

He further states:

> And I'll be quite frank. Most of my abortions are elective in that 20 to 24-week range.

My only point to my colleague was that most partial-birth abortions are elective. I think that has been, frankly, the testimony of most of the witnesses we had. I don't think it is really a disputed issue. That was the only point of my question.

I want to return briefly to the issue of medical necessity. I would like to maybe quote a couple more experts who have testified in front of Congress in the past.

Dr. Pamela Smith, Medical Education Director of Mount Sinai Medical Center in Chicago, has testified in front of Congress. Here is what she has said.

So, for someone to choose a procedure that takes 3 days, if they are really interested in the life of the mother, that puts the mother's life in further jeopardy.

Members of the Senate, those are not my words. Those are the words of Dr. Pamela Smith.

Dr. Nancy Romer, Chairman of OB/GYN and professor at Wright State University Medical School in Ohio, had this to say:

There is simply no data anywhere in medical literature in regard to the safety of this procedure.

Again she was talking about the partial-birth abortion. I continue to quote Dr. Romer.

There is no peer review or accountability of this procedure. There is no medical evidence that a partial-birth abortion procedure is safer, or necessary to provide comprehensive health care to women.

Finally, Dr. Donna Harrison, a Fellow of the American College of Obstetricians and Gynecologists, put it most simply:

This is medical nonsense. It is a hideous travesty of medical care and should be rightly banned in this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I rise in support of the Partial-Birth Abortion Ban Act. I am grateful to the Senator from Pennsylvania, and my colleague from Ohio, the senior Senator from Ohio, for their courageous fight to stop this barbaric procedure. Any of us who have listened to them cannot help but be moved by their eloquence in regard to the importance of banning this procedure.

This tie that I have on is one that was given to me last week. It says, ''Stop Violence Against Women.''

I wish those of us who are opposed to this procedure would have had ties made saying, ''Stop Violence Against Babies.''

It is even difficult to talk about because it is a gruesome procedure, but we need to remind Members of the Senate that this is a procedure that is not done on an emergency basis. It is a little bit difficult for me to talk about it because last week my daughter delivered our fifth grandchild, a little baby girl, Emily Elizabeth.

The way the procedure goes is that a woman goes through 2 days of doctor visits to get dilated; 2 days to get dilated. On the third day, the baby is positioned for delivery in the birth canal. The doctor then pulls the living baby feet first out of the womb and into the birth canal, except for the head which the abortionist purposely keeps lodged just inside of the womb. The doctor punctures the base of the baby's skull with a surgical instrument such as long surgical scissors or a pointed hollow metal tube called a trochar.

He then inserts a catheter into the wound and removals the baby's brain with a powerful suction machine. This causes the skull to collapse, after which the doctor completes the delivery of the now dead baby.

I can't understand how anyone can support this ghastly procedure or cannot support it being illegal.

There are some who say it is hard to believe we are even talking about the question on the floor of the Senate. In an editorial today, the Washington Post called our debate in the Senate on this subject ''pointless.'' I have also heard my colleagues take the floor and state, Have we no other priorities that take precedence over this? What priority is more important than human life? It is hard for me to believe anyone would say we should not even discuss this procedure that kills a human being. It should have been banned years ago. I am glad we are moving early in the 108th Congress to go forward with something that should have been done many years ago.

The subject of partial-birth abortion is not a new one for me. Eight years ago in 1995, Ohio was the first State to pass a partial-birth abortion ban. The bill prohibited doctors from performing abortions after the 24th week of pregnancy and banned completely the dilation and extraction procedure we call the partial-birth procedure in this bill, the one I just described.

The bill allows late-term abortions to save the life of the mother. The women seeking abortions after the 21st week of pregnancy were required to undergo tests to determine the viability of the fetus, and if the fetus was deemed to be viable, the abortion would be illegal.

I am glad the Senator from Ohio pointed out the language in this bill has been carefully drafted. It is not ambiguous. I have heard the Senator from California say this should have gone to the Judiciary Committee. The fact is this has been discussed on the floor of the Senate since 1994.

While I was Governor, I watched the partial-birth abortion ban make its way through the 104th and 105th Congresses, only to be vetoed by President Clinton. It has been around a long time.

After I arrived in the Senate in the 106th Congress, I gave a speech in support of banning partial-birth abortion and, quite frankly, lobbied some of my colleagues to support it. The bill passed both Chambers of the Senate and the House. It made it to conference but never came out of conference.

I have listened to my colleagues quote statistics and spout off facts about medical necessity and the health of the mother. We can all quote different statistics, but the bottom line is there is no need for this procedure. My colleague from Ohio has spoken to that very clearly. Most of these partial-birth abortions are elective. They take 3 days to complete. If a mother really needs an abortion, she has alternatives available to her that are not as tortuous as partial-birth abortion.

It is interesting to note that in January 2003 the Alan Guttmacher Institute, which is affiliated with Planned Parenthood, published a survey of abortion providers, showing that the number of partial-birth abortions more than tripled between 1996 and 2000. Why is the occurrence of such a procedure that is never medically necessary increasing? One of the main reasons we do not need these late-term abortions is thanks to the technology available today. It is better than it has ever been before. We can identify problems very early in the pregnancy so abortions can take place earlier. Women today are being encouraged to come in early in the first trimester for the various tests they need so that if an abortion is acceptable to them, they can have an early abortion while the baby is still not viable outside the womb. In fact, to date, the technology is so sophisticated that if they find there is something wrong with a baby, they can go in through surgery and correct it in the womb.

I want to make it clear to those who believe in abortion and who face that tremendous decision in terms of whether they are going to deliver the baby, that there are other procedures available. The victims of the partial-birth abortions are human beings. I find it interesting that they are sometimes called ''living fetuses.'' They are living human beings. Whether they are called ''babies'' or ''fetuses,'' no one seems to dispute the fact that they are living. In fact, they are human babies and they can feel pain. When partial-birth abortions are performed, these babies are just 3 inches away from life and, for that matter, seconds away from life.

I urge all of my colleagues in the Senate to stand up against what I refer to as ''human infanticide.'' This is not Roe v. Wade. I suspect that when the vote is taken on the floor of the Senate, there are going to be many people who will support partial-birth abortion who label themselves as pro-choice and pro-abortion. When this legislation passed in Ohio back in 1995, it passed overwhelmingly in both houses, and there were pro-life and pro-choice and pro-abortion people who supported this legislation. This is not an issue of Roe v. Wade. This is an issue of banning a procedure that is gruesome and is not medically necessary.

In the State of the Union address this year, President Bush again pledged to support the legislation and said, ''We must not overlook the weakest among us. I ask you to protect infants at the very hour of their birth and end the practice of partial-birth abortion.''

I urge my colleagues to vote to ban partial-birth abortions in the United States of America and end this national tragedy.

The PRESIDING OFFICER. Does the Senator from Ohio yield the floor?

Mr. VOINOVICH. Yes. I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, my friend talked about the joy of childbirth. He is so right. I have a magnificent grandchild. I have two beautiful children, a boy and girl. They were

both premature. It was very scary, and they made it. It was wonderful. I absolutely can say there is no greater joy in my life. As I stand here today, it is because I am pro-children. I am pro-family. I am for healthy families. I am for women not having to face a situation where they could be paralyzed for life if a certain procedure is banned.

My friend says it is not about Roe v. Wade. Nothing could be further from the truth. None other than the Supreme Court said on an identical bill in Nebraska that, in fact, it was against Roe v. Wade—that because there was no exception for the health of the mother in which you have the same situation here. You have salutary language in findings. But the operative language makes no exception for health. That is against Roe v. Wade. Roe v. Wade was a very carefully crafted bill that has withstood time since 1973. Even this Supreme Court, which is new, as we well know, and to the right, has supported Roe very recently.

It says to me, if you look at the case that just came down, you have two problems with this bill that goes against Roe: No health exception. Everyone agrees there is no health exception. The fact is that the terminology used is very vague. Therefore, it puts an undue burden on a woman because it could ban all abortion procedures.

Having said that, it seems to me puzzling why this bill didn't go back to the Judiciary Committee. I will tell you why. It is not as if nothing has changed since we looked at this the last time. Everything changed. The Supreme Court said the partial-birth abortion ban, as the Senator calls it, was unconstitutional in Nebraska because they had no health exception and it put an undue burden on women because the definition is vague. That has not been cured here.

This is going to go right back to the Supreme Court. I am sure the President will sign this bill because he definitely said he is looking forward to doing that. And it will go to the Court, and I believe it will be struck down because it hasn't met the problems the Court found.

It is puzzling to me why we wouldn't send it back to the Judiciary Committee to discuss the problems the Court found with a legally identical bill. I have had printed in the RECORD a letter from attorneys who say, in fact, this is a legally identical bill.

I want to close tonight for my part and talk about another case because my friend was very eloquent, and I appreciate his eloquence about children and families.

Mr. VOINOVICH. Will the Senator from California yield for a question?

Mrs. BOXER. I certainly will.

Mr. VOINOVICH. Do you agree this issue has been debated on the floor of the Senate for a long period of time?

Mrs. BOXER. Absolutely, it has been, but not since the Supreme Court case which struck down a legally identical bill. That is why I believe it should go back to Judiciary.

Mr. VOINOVICH. Is my colleague from California aware of the fact that those of us who want to ban this procedure believe the language in this bill is not vague and that it will sustain a test in the Supreme Court of the United States?

Mrs. BOXER. With all due respect to my friend, we have a Judiciary Committee that is supposed to make those judgments. So I am sure you think it is fine. You thought the other one was fine, the Stenberg case. You thought the Nebraska case met the Roe v. Wade requirements as well. You were wrong and you were faulty.

So I believe if there is sincerity here—this isn't about politics or whatever—it is really about meeting the constitutional requirements of Roe, it should have gone back.

But I agree with my friend, sure, it has been debated quite a bit, but not since this latest case.

Mr. VOINOVICH addressed the Chair.

The PRESIDING OFFICER. Does the Senator from California yield for a question?

Mr. VOINOVICH. Will the Senator yield the floor back so I can make a——

Mrs. BOXER. I am not going to yield the floor back to you, but I am happy to yield for a question.

Mr. VOINOVICH. The question I would ask, again, is that those of us who have had a concern about this for many, many years have studied the language quite carefully. I particularly have because of the fact that we had two partial-birth abortion statutes that passed in Ohio, and we were looking at what the Supreme Court was going to do with the Nebraska case.

I must say to you we have looked at it as carefully as we can. We believe the language that is in the bill is not vague. We believe it will stand up to a test in the Supreme Court, and that to go back to the Judiciary Committee, quite frankly, would just delay the real issue; that is, whether we have enough votes on the floor of the Senate to ban partial-birth abortions.

Mrs. BOXER. Was that a question?

Mr. VOINOVICH. I think that was a statement.

Mrs. BOXER. Let me say to my friend, I appreciate his sincerity. I do not question it for one minute. But I also have studied this. I also have cared about this, because I care about women who I am going to be talking about here tonight, and many of whom have come to see me in California and here. They are begging me to fight this because it does not have a health exception. Even though my friend thinks you have written it in a way to have a health exception, it isn't in the bill.

Here is another story about Claudia Crown Ades, who, in 1992, was in the 26th week of a desperately wanted pregnancy. Claudia and her husband, Richard, were told, after an ultrasound, that their son had a genetic condition called trisomy 13. His anomalies included extensive brain damage due to a fluid-filled nonfunctional brain and a malformed heart with a large hole between the chambers. He also had developed liver, kidney, and intestinal malformations. He did not have normal blood flow.

They were told his condition was incompatible with life. She was told if she did not have this procedure she could suffer a number of problems, which I have talked about before, that we have been told by doctors can occur if the procedure is not available.

Her loving family got together, and they decided to have this procedure. It saved her. She did not have to suffer the potential of having a hemorrhage, a blood clot, an embolism, stroke, or paralysis.

So I know my friend worked hard on this bill. I am just saying, it would not take that much effort to get the Judiciary Committee to take a look at it since the stakes are so high for the women of this country to outlaw a procedure, to not have a health exception, and to have such a vaguely drawn phrase about a procedure that is a nonexistent medical procedure. It was given to a procedure that I have already put in the RECORD.

Maybe my friend did not hear me, but several physicians, representing 45,000 OB/GYNs, say there is no such thing as this, and that these procedures could be far more than one.

So I am going to close my statement here tonight.

Does my friend have a question?

Mr. VOINOVICH. I do have a question.

Mrs. BOXER. I am glad to yield for a question.

Mr. VOINOVICH. What is puzzling to me—the question is, you have pointed out some unusual cases that——

The PRESIDING OFFICER. Senators are reminded that they will address questions through the Chair and not address each other in the first person.

Mr. VOINOVICH. Would the Senator from California agree that the technology today, in terms of the delivery of babies, in the ascertaining of a problem that a baby or a delivering mother would have, has improved substantially over what it was in 1994 when we first started the debate on this legislation?

Mrs. BOXER. Thank God, we have had so many advances. In my own family we had a circumstance where we were very fearful we were going to lose a pregnancy of one of my children. And because of these incredible advances, she held on, and long enough to have a healthy baby.

What a miracle that is. That is the reason why I support banning all late-term abortions across the board. I think that is consistent with Roe. But for the life and health of a woman, which always must be, it seems to me, considered in a civilized country, we need to make sure women are not facing these kinds of serious problems.

So yes, I say to my friend, I could not be more excited about the incredible progress we have made.

Does my friend have another question?

Mr. VOINOVICH. I do.

Mrs. BOXER. I am happy to yield.

Mr. VOINOVICH. If you agree that the medical technology today is better than it was in 1994, can you explain to me why the Alan Guttmacher Institute, which is an affiliate of Planned Parenthood, published a survey of abortion providers, showing that the number of partial-birth abortions more than tripled between 1996 and 2000? Wouldn't you think there would be less partial-birth abortions because of the technology that we have, less cases like the ones you have presented here before my colleagues in the Senate?

Mrs. BOXER. Let me say to my friend, he keeps referring to partial-birth abortions: ''There would be less partial-birth abortions.'' I would defy my friend to show me where there is a list of so-called partial-birth abortions. Because there are none. This is a made-up term. I will read to you again—because having a debate about partial-birth abortion, I do not know that you take care of these women on a daily basis, as do physicians, but I want to answer my friend.

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

Mrs. BOXER. I would like to answer my friend's question. He is asking me a question, whether I disagree with the premise. The premise is, there is a procedure called partial-birth abortion. Physicians are telling me—and I believe them, I hate to tell you, over you, because this is their life's work. These are OB/GYNs. They are saying, there is no such technique as partial-birth abortion.

Reclaiming my time, I am going to conclude in this way: I have shown you a couple of cases. My friends say: Oh, they are a couple of anomalies. There are many more I am going to share—many, many more—many more photographs, many more stories, compelling stories of loving, religious, caring families that made a decision based on the facts as they were laid out, so that a woman could live and be a mother to her other children, so she could go on with her life, where she could have been in a circumstance where she could have absolutely been in peril for her whole family for the rest of her life.

I think we have a lot of power here in the Senate. That is why I am so proud the people of California sent me here. And my friend feels so proud the people of Ohio sent him here, as my friend, who is sitting in the Chair, feels so proud the people of Nevada sent him here.

We work hard to get here. And I do not shrink from responsibility. I am very happy to take on whatever responsibility that I have.

I do not see it in the Constitution that I should outlaw a medical procedure that doctors are saying to me is necessary to save the life and health of a woman.

I think that harms families. If my friends would like to offer a health exception, we would have a lot of support. DICK DURBIN will do that. I hope a lot of you will join us.

I will conclude my remarks because this is what I really think about this. I don't think this about my friends who are on the floor, but I think if you look around for the past 2 years, you see what has happened to women who want to exercise their right to choose, their right to family planning, and you see what has happened to women in this country. So I am going to conclude with the chart that will go through what has happened to women's rights in this country in terms of a right to choose, which is so important, it seems to me.

First, we have a situation where the administration says pregnant women won't be eligible for health benefits; their fetus will—not them. Keep in mind what we have here. This is a circumstance where we have a bill that will outlaw a procedure that doctors tell us they need to save the life and health of a woman. Put that into perspective with what has been happening lately to women's rights. So a woman is ignored by this administration. They are going to give the prenatal care to the fetus, not to the woman. What does that say about women, by the way? We are not entities; we are just here to exist. People can look right by us. That is not right. That in and of itself is an insult, a lack of respect, it seems to me, for women.

Pushing legislation recognizing an embryo as a person with rights separate and apart from the woman's: Again, what does that say about women?

Moving legislation forcing some young women to make reproductive health choices alone, and criminalizing caring adults who help them: That will hit us soon in this debate.

Attempts to block women's access to RU486, a drug proven safe and effective by the FDA, which will avoid abortion procedures: We have trouble with that. By the way, women all over the world have this, and we have fought hard to get our women to have nonsurgical abortion, which is safer. It has been a fight. So far we have won it. It is under attack.

Attempts to block access to emergency contraception: We are going to have a chance to vote on that during the course of this debate.

Denial of Roe v. Wade's protections to Federal employees; low-income women who rely on the Federal Government for their health care; poor women who live in the District of Columbia—in other words, women, including U.S. servicewomen, who pay out of their own pocket for a procedure cannot even use a Federal facility, with our women abroad, in difficult places all over the world—again, a lack of respect.

Why am I bringing this up now? Because I see what we are doing here as a continuation of what I would call a basic assault on a woman's right to choose, which I consider to be a fundamental right that has been articulated in Roe v. Wade and stands for respect of a woman.

We have seen starving funding for family planning programs, and international family planning is basically impounded by this administration, $34 million. That money can save, by the way, tens of thousands in abortions. If a woman has family planning, she will hopefully plan her family and not be in a circumstance where she might seek an abortion. Tell me how that makes any sense. I don't really see it.

Attempts to channel taxpayer funds to deceptive crisis pregnancy centers that intimidate and withhold information from women; pushing legislation to gag doctors from providing abortion referrals; placing a gag rule on international family planning providers; push for youth programs that censor discussion of contraception benefits; censorship, then revision of medical information on Government Web sites about condoms, and the unproven ''link'' between abortion and breast cancer; attempt to fund Federal research on the unproven link between abortion and breast cancer; key Cabinet appointments who oppose the constitutionally protected right to choose; campaign to pack courts with judges hostile to women's rights; refusal to hold perpetrators of violence, intimidation, and harassment at reproductive health clinics responsible for their illegal acts; refusal to act on international women's rights treaty. I am involved in that, the convention to eliminate all forms of discrimination against women. We are standing with countries such as Angola because somebody says that may mean we support a woman's right to choose. Heaven forbid. So we cannot even sign onto a treaty. It is stunning to me; enactment of 335 antichoice State measures into law since 1995.

So what I am suggesting to you is there is an agenda here—and this is part of it—to ill-define a procedure so it could, in fact, relate to more than one. The court says it could effectively ban all abortion, without really saying they are doing that and not having a health exception, so that women could face all kinds of horrible problems. It is just part of this campaign, if you will, this assault that I see happening, that I feel is very sad for the women in this country.

This is the 21st century. We should allow women to make very private, very difficult choices, as long as these decisions are in accord with the guidelines sent down in 1973.

I will close by saying that Roe v. Wade is a very logical, moderate position. It says in the very beginning of a pregnancy that a woman has a right to choose to have an abortion, without the interference in that decision by government. Then it says after that time, government cannot come in and put in restrictions—but always an exception for the life and health of the mother. I think that is a balance.

The problem with this bill, it bans procedures—and maybe all procedures—many procedures, except some that are very dangerous to a woman, and procedures that could be used at any stage of abortion. That is what the court said, and it makes no exception for her health. I argue the life exception is very narrowly drawn, but we don't have time to go into that tonight.

Thank you very much. I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. VOINOVICH. Mr. President, I reiterate the fact that this is not an issue that gets to the basis of the Supreme Court decision in Roe v. Wade. I predict that just as in the past on the floor of the Senate, there are going to be people supporting the outlaw of this gruesome procedure, which is not necessary, who are very much pro-choice, pro-abortion, and who will probably have amendments on the floor of the Senate, a sense of the Senate, in terms of Roe v. Wade and many of the people who will vote to sustain Roe v. Wade will be some of the same people who will vote against this procedure because they understand how gruesome it is.

I point out one other fact. You just cannot give the back of the hand statistics from the Alan Guttmacher Institute, which is a very respected institute, which is an affiliate of Planned Parenthood, that published a survey of abortion providers showing—these are abortion providers, OK—showing that the number of partial-birth abortions more than tripled between 1996 and 2000.

So this procedure is not one that is being practiced in some of the examples that my colleague from California has presented on the floor of the Senate but, rather, has become a regular procedure in the offices of many OB/GYN doctors in this country—a procedure that is not necessary.

Mr. KYL. Mr. President, I am proud to be a cosponsor of this much-needed and long-overdue measure. There is no place in a decent Nation for the barbaric practice known as partial-birth abortion. Senator SANTORUM's measure is the only one the Senate is considering that will put an end to it once and for all.

Every abortion ends the life of a tiny boy or girl, but only partial-birth abortion involves the destruction of life at the moment when a child is being brought out of the womb—and he or she is just inches from under the full protection of our laws. Partial-birth abortion blurs the line and does so in such a way as to further erode the sanctity of life.

The legislation Senator SANTORUM has proposed should avoid the constitutional problems that five Supreme Court Justices found in Nebraska's statute in the Stenberg v. Carhart case. Specifically, it addresses the concern that the partial-birth abortion procedure might be necessary to protect the health of the mother by incorporating as findings the view of the American Medical Association and the overwhelming majority of physicians that there is no circumstance where the health of the mother demands this procedure. It also contains a more specific definition of the partial-birth abortion procedure, in response to the Stenberg decision.

This revised definition ensures that, once we pass this bill, it will no longer be permissible in America to—and here I quote the language of the bill itself—''deliberately and intentionally vaginally deliver a living fetus until, the entire fetal head is outside the body of the mother and then kill the baby as happens in a typical partial-birth abortion.''

There is no doubt, in contrast, that the substitute measures that the Senate is considering will permit the continued use of this unconscionable procedure. To secure the approval of the radical, pro-abortion lobby, the authors of such measures inevitably draft their so-called ''bans'' in such a way as to permit ''health of the mother'' exceptions that effectively negate the restrictions. Again, the testimony of the mainstream medical community makes it clear that ''health of the mother'' is a red herring in the partial-birth abortion context, and I trust that any measure containing such an ''exception'' will be soundly defeated.

It is simply not possible to seek cover politically while substantively protecting the most unscrupulous abortionists. The American people overwhelmingly favor enactment of a real partial-birth abortion ban. Despite the predictable efforts to obscure what is really a very clear issue—how we wish to treat the most vulnerable members of our human family—they will soon have it.

MORNING BUSINESS

Mr. VOINOVICH. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business.

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

THE PROSPECT OF WAR AGAINST IRAQ AND SUPPORTING OUR ARMED FORCES

Ms. MIKULSKI. Mr. President, I come to the Senate floor today to speak about some of the most crucial issues facing our Nation: No. 1, the prospect of war against Iraq, and, No. 2—though it will never be in second place—support for our U.S. military.

It has been my longstanding position to support a multinational response to the Iraqi threat. That means building international support to defang Saddam Hussein. We all know he is a duplicitous character, but I believe if the goals of America and the world are to be successful, we need to work in a multilateral way, working through the United Nations, to build international legitimacy, and also to get the world to support us, to share the burden of war, if war is necessary, during the war in terms of the danger, and to share the burden of what would come after the war in terms of the economic cost of rebuilding Iraq.

The risks and consequences of acting alone are much greater than they would be for multinational action. The risks to our troops are greater. If allied forces do not join the mission, our troops will be bearing that burden all by themselves. The challenge in post-conflict Iraq will be greater if other nations do not share this responsibility or this burden. Also, I believe the consequences for the war on terrorism will be greater if we lose the essential cooperation of other nations.

There is a lot of disagreement about going to war: whether we should go to war now; whether we should go to war at all; whether we should go to war alone or whether we should continue to work through the United Nations. I have stated my own positions. But I believe there is something all Americans agree on; that is, we must support our troops. We must stand up for those who are standing up for us. We must protect our defenders, the brave men and women of our military, and we must support them not only with words but with deeds. That means ensuring that our troops have the best and smartest weapons, that they have the training and the equipment they need.

But while we are standing up for our military, we must also stand up for their families. Our troops will face grave danger. They should not have to face fear for their families, and particularly they should not have to worry about their families' finances.

Although America is on the brink of war, American military families must never be on the brink of bankruptcy. That is why we, in the Senate, must take immediate steps to support military families.

There is legislation pending. Let's provide tax relief to military families. Let's pass legislation to help the families of the National Guard and the Reserves who have been called up for longer periods than at any time in the past 40 years.

Each and every member of our military is part of the American family. Their service is a tremendous sacrifice and great risk. These are ordinary men and women called upon to act in an extraordinary way. Whatever their Nation asks them to do, I know they will do it with bravery, fortitude, and gallantry. All Americans owe them a debt of gratitude.

Members of the military, though, do not just need our gratitude through words; they need our gratitude through deeds. That is why I support two immediate steps and call upon the Senate to join with me and other like-minded colleagues to advance these steps.

I believe the Senate must quickly pass legislation to ease the tax burden

on our American military. Our troops should not have to worry about tax deadlines and paperwork when they are preparing to defend our Nation.

I urge the Senate to pass, this week, the Armed Forces Tax Fairness Act, without loading it down with any special interest giveaways. While some are preoccupied with tax cuts for ''Joe Millionaire,'' we should be preoccupied with GI Joe and GI Jane.

At the same time, we need to look at the financial burden many of the families are facing. Let's talk about the National Guard and the Reserves. The Senate also has to help the Guard and Reserves. They have been called up in record numbers. Right this minute, 168,000 Guard and Reservists are serving alongside our active-duty military.

Since September 11, over 230,000 of our National Guardsmen and Reservists have been mobilized. In my own home State of Maryland, that number is at least 4,000. And not only have they been called up, but many have been called up more than once over the past year and a half.

The Guard and Reserves are ready to serve. They are our citizen soldiers. They are called up in times of national emergency. Yet they are being asked to serve for longer periods of time. Many have been called up three or four times since September 11. This places a tremendous burden on their families. There are financial burdens of losing pay and losing businesses. Let me give you some examples from my own home State of Maryland.

The 115th Military Police Battalion of the Maryland Army National Guard has been deployed repeatedly since September 12, after the attack on the United States of America. That is when they were called up to stand guard at the Pentagon. When I went over to the Pentagon after the attack, I saw Maryland responding: I saw on the perimeters our own National Guard protecting the Pentagon, and Maryland first responders doing the rescue and recovery. When they were called up, they wanted to be there. Then they had a two-week breather. But then they were called up to guard the prisoners at Guantanamo Bay, and now they are deployed in Afghanistan.

The long periods of mobilization are hard not only on them but on their families. Let me give you some examples of what the families are facing.

I will talk about a reservist in Columbia, MD. He is a wonderful guy, and he owns a small home improvement business. After the terrible snows, this business would be booming, but he is not there to fix gutters or sidings, or help seniors repair those leaky basements. He has been called up most of the year. He has already been called up three times, and now he has been called up once again. He has been called up so often that he has had to shut down his home improvement business, where he was the sole employee. His family is now forced to borrow against their home to make ends meet. They have already gone through their savings, and they have already gone through their children's tuition money for college. We have to think about this man and his family.

In a family in Centreville, the husband has been activated four times over the past year and a half. He is the main breadwinner. The family has already lost half of their income this year. They are having a difficult time making payments on their home and, in fact, the wife and children are now considering moving in with her parents.

Then there is the National Guardsman in St. Mary's County, who has been deployed 9 months out of the last 18 months. In February, he was deployed again. His wife is now working two jobs to make ends meet.

We have to face this challenge. For years we have faced the challenge of how we had been shortchanging our military. We have increased pay for full-time duty and we have improved benefits. We needed to do that and that was the right thing to do.

Now we are facing a unique challenge, looking at the Guard and the Reserves who are ready to do their duty, but they are now being deployed as frequently as if they were on active duty and their families are facing hardship.

As part of this response, I will be joining Senator DICK DURBIN to introduce legislation called the Reservists Pay Security Act of 2003. It would ensure that Federal employees who take leave to serve in our military reserves receive the same pay as if no interruption in their employment occurred. Why start with Federal employees? Well, many large companies and local governments continue to pay the full salary of their employees when they are activated. I applaud those excellent corporate citizens and those local governments. Some of the largest employers in my own State are also meeting that responsibility. The Federal Government should be a model employer and set the example for large businesses. This should be a first step.

I believe we should move quickly to pass this bill because many members of the Guard and Reserves do work for the Federal Government in highly specialized areas. But the Federal Government needs to do more than that. We need to take a look at those who work for small business and those who are self-employed. A call for duty will be responded to, but a call for duty time and time again in a single-year period places the responsibility on the family. American families should never subsidize our war effort. We should be looking out for those families.

Supporting our troops should be more than speeches, it should be more than parades. Sure, when the war begins—if it does begin—I believe there will be an outpouring of great American sympathy. But we need to put it into action to help the men and women defending our Nation; and for the full-time active duty, continue raising pay and improving benefits; and for our Reserves and our Guardsmen, to close the gap between the income they are leaving behind and the country they are working to defend.

Please, let's pass that Tax Fairness Act. Our military should not even be paying taxes when they are at war in Iraq. There should be shared sacrifice in the United States of America, and that means not only shared sacrifice in terms of those who are willing to go and fight, but we need to fight for those who are fighting for us.

I urge my colleagues to join me in putting the men and women of our military at the top of our agenda, whether as we look at the issues facing the economy or facing taxes, because, remember, as our budget is strained, theirs is near the breaking point.

I conclude by saying God bless our troops and God bless America.

A DIPLOMATIC LOSS

Mr. JEFFORDS. Mr. President, I wish to call attention to a piece that appeared on the editorial pages of the Washington Post on Sunday. It was a letter of resignation from John Brady Kiesling, a career State Department diplomat who offered some very compelling thoughts about the state of our international relations.

After two decades with the State Department, Mr. Kiesling left his job on March 7 because he no longer believed the President's policies reflected the interests of the American people.

Mr. Kiesling wrote that in our pursuit of war with Iraq, the U.S. had squandered the legitimacy:

that has been America's most potent weapon of both offense and defense since the days of Woodrow Wilson.

We have begun to dismantle the largest and most effective web of international relationships the world has ever known.

Mr. Kiesling wrote:

Our current course will bring instability and danger, not security.

But it was this thought that I found most compelling:

When our friends are afraid of us rather than for us, it is time to worry. And now they are afraid. Who will tell them convincingly that the United States is as it was, a beacon of liberty, security and justice for the planet?

This central question raised by Mr. Kiesling resonates with many Americans who feel frustrated and confused by the way the Bush Administration is performing on the international stage:

Why have we failed to persuade more of the world that a war with Iraq is necessary?

I ask unanimous consent that Mr. Kiesling's full letter of resignation, as it appears in yesterday's Washington Post, be printed in the CONGRESSIONAL RECORD.

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

THE DIPLOMAT'S GOODBYE

FEBRUARY 27, 2003

DEAR MR. SECRETARY: I am writing you to submit my resignation from the Foreign

Service of the United States and from my position as Political Counselor in U.S. Embassy Athens, effective March 7. I do so with a heavy heart.

The baggage of my upbringing included a felt obligation to give something back to my country. Service as a U.S. diplomat was a dream job. I was paid to understand foreign languages and cultures, to seek out diplomats, politicians, scholars and journalists, and to persuade them that U.S. interests and theirs fundamentally coincided. My faith in my country and its values was the most powerful weapon in my diplomatic arsenal.

It is inevitable that during twenty years with the State Department I would become more sophisticated and cynical about the narrow and selfish bureaucratic motives that sometimes shaped our policies. Human nature is what it is, and I was rewarded and promoted for understanding human nature. But until this Administration it had been possible to believe that by upholding the policies of my president I was also upholding the interests of the American people and the world. I believe it no longer.

The policies we are now asked to advance are incompatible not only with American values but also with American interests. Our fervent pursuit of war with Iraq is driving us to squander the international legitimacy that has been America's most potent weapon of both offense and defense since the days of Woodrow Wilson. We have begun to dismantle the largest and most effective web of international relationships the world has ever known. Our current course will bring instability and danger, not security.

The sacrifice of global interests to domestic politics and to bureaucratic self-interest is nothing new, and it is certainly not a uniquely American problem. Still, we have not seen such systematic distortion of intelligence, such systematic manipulation of American opinion, since the war in Vietnam. The September 11 tragedy left us stronger than before, rallying around us a vast international coalition to cooperate for the first time in a systematic way against the threat of terrorism. But rather than take credit for those successes and build on them, this Administration has chosen to make terrorism a domestic political tool, enlisting a scattered and largely defeated Al Qaeda as its bureaucratic ally. We spread disproportionate terror and confusion in the public mind, arbitrarily linking the unrelated problems of terrorism and Iraq. The result, and perhaps the motive, is to justify a vast misallocation of shrinking public wealth to the military and to weaken the safeguards that protect American citizens from the heavy hand of government. September 11 did not do as much damage to the fabric of American society as we seem determined to do to ourselves. Is the Russia of the late Romanovs really our model, a selfish, superstitious empire thrashing toward self-destruction in the name of a doomed status quo?

We should ask ourselves why we have failed to persuade more of the world that a war with Iraq is necessary. We have over the past two years done too much to assert to our world partners that narrow and mercenary U.S. interests override the cherished values of our partners. Even where our aims were not in question, our consistency is at issue. The model of Afghanistan is little comfort to allies wondering on what basis we plan to rebuild the Middle East, and in whose image and interests. Have we indeed become blind, as Russia is blind in Chechnya, as Israel is blind in the Occupied Territories, to our own advice, that overwhelming military power is not the answer to terrorism? After the shambles of post-war Iraq joins the shambles in Grozny and Ramallah, it will be a brave foreigner who forms ranks with Micronesia to follow where we lead.

We have a coalition still, a good one. The loyalty of many of our friends is impressive, a tribute to American moral capital built up over a century. But our closest allies are persuaded less that war is justified than that it would be perilous to allow the U.S. to drift into complete solipsism. Loyalty should be reciprocal. Why does our President condone the swaggering and contemptuous approach to our friends and allies this Administration is fostering, including among its most senior officials. Has oderint dum metuant [Ed. note: Latin for ''Let them hate so long as they fear,'' thought to be a favorite saying of Caligula] really become our motto?

I urge you to listen to America's friends around the world. Even here in Greece, purported hotbed of European anti-Americanism, we have more and closer friends than the American newspaper reader can possibly imagine. Even when they complain about American arrogance, Greeks know that the world is a difficult and dangerous place, and they want a strong international system, with the U.S. and EU in close partnership. When our friends are afraid of us rather than for us, it is time to worry. And now they are afraid. Who will tell them convincingly that the United States is as it was, a beacon of liberty, security and justice for the planet?

Mr. Secretary, I have enormous respect for your character and ability. You have preserved more international credibility for us than our policy deserves, and salvaged something positive from the excesses of an ideological and self-serving Administration. But your loyalty to the President goes too far. We are straining beyond its limits an international system we built with such toil and treasure, a web of laws, treaties, organizations and shared values that sets limits on our foes far more effectively than it ever constrained America's ability to defend its interests.

I am resigning because I have tried and failed to reconcile my conscience with my ability to represent the current U.S. Administration. I have confidence that our democratic process is ultimately self-correcting, and hope that in a small way I can contribute from outside to shaping policies that better serve the security and prosperity of the American people and the world we share.

IRAQ

Mr. STEVENS. Mr. President, I ask unanimous consent that the Sunday, March 9, 2003 Washington Post editorial entitled ''Moment of Decision'' be printed in the RECORD at the appropriate place.

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

(See exhibit 1.)

Mr. STEVENS. I believe this editorial accurately describes the current impasse at the U.N. Security Council over whether to enforce Security Council Resolution 1441.

That resolution gave Saddam Hussein a final opportunity to disarm and provided for ''serious consequences'' should he fail to comply. It is now clear that Saddam Hussein is in violation of Resolution 1441, yet some member states on the Security Council are using this forum to press an unrelated agenda that is hostile to the interests of the United States.

By pursuing this course of action, these member states are contributing to the global threat that Saddam Hussein poses and undermining the very purpose of the United Nations—to ensure the peace and security of the international community.

We know that Saddam Hussein possesses weapons of mass destruction. We know that Saddam Hussein will use those weapons against those who oppose his tyranny. We know that Saddam Hussein has failed to disarm in violation of Security Council Resolution 1441.

Yet, rather than holding Saddam Hussein accountable for his defiance, these member states have reduced the Security Council to a debating society, hardly relevant to the tough decisions the United States and its allies face in the war against terrorism.

Only by standing together will the United Nations finally fulfill its commitment of ensuring global peace and security.

EXHIBIT 1

[From the Washington Post, Mar. 9, 2003]

MOMENT OF DECISION

The Debate on Iraq at the United Nations Security Council no longer concerns whether Iraq has agreed to disarm; in fact, it hardly concerns Iraq at all. At Friday's meeting, once again, neither chief U.N. inspector Hans Blix nor any member of the council contended that Saddam Hussein has complied with the terms of Resolution 1441, which offered him a ''final opportunity'' to give up weapons of mass destruction. But most members chose not to discuss the ''serious consequences'' the council unanimously agreed to in the event of such non-compliance. Some, such as Mexico and Chile, essentially argued that Iraqi disarmament was less important than avoiding a split of the Security Council. Others, such as Russia and France, sought to change the subject from Iraq to the United States' global role. They argued for using Iraq to establish that international crises should be managed solely by the Security Council—and not through military action that necessarily must be led by the United States.

It's painful to imagine Saddam Hussein's satisfaction in observing the council once again descend into internal quarrels rather than hold him accountable for his defiance of its resolutions. But it's not hard to understand much of the diversionary argument. Few countries outside of the Middle East feel directly threatened by Iraq, other than the United States. Many have an understandable aversion to war when their own citizens' lives don't appear to be at risk. Some, notably Russia and France, have been unsuccessfully seeking for a decade to check American influence and create a ''multipolar world''; the Iraq crisis offers a fresh platform for an agenda more important to them than the menace of a Middle Eastern dictator. The Security Council's action on Iraq ''implies the international community's ability to resolve current or future crises . . . a vision of the world, a concept of the role of the United Nations,'' said French Foreign Minister Dominique de Villepin. ''There may be some who believe that these problems can be resolved by force, thereby creating a new order. But this is not what France believes.'' To oppose the use of force in Iraq, in other words, is to oppose the exercise of the United States' unrivaled power in the world.

We share the concern of those on the council who spoke of the damage of an enduring rift over Iraq—damage for which the Bush administration's clumsy and often high-handed diplomacy will be partly responsible.

Yet we would argue that the only way to preserve international cohesion is for the council to face up to the tough question that it has been avoiding for weeks—not world order or U.S. power but Saddam Hussein's defiance of an unambiguous Security Council disarmament order. In their bid for global opinion, the French and Russians now invoke principles they would never agree to if they were applied to Chechnya or Francophone Africa. As President Bush pointed out in his news conference Thursday, Iraq's continued stockpiling of banned weapons is a direct threat to the United States, and the country has a right under the U.N. Charter to defend itself against that threat.

By taking its case to the United Nations, the Bush administration tested whether the Security Council—which only rarely in the past 50 years has been able to respond to the world's crises—could serve as a place where such threats could be addressed. Yet after six months of intensive effort, France, Russia, Germany and others refuse to accept the consequences of the process they claim to favor. They would rather the Security Council abandon its own resolutions, or split apart, than endorse a U.S. use of force against an outlaw tyrant. If their goal is really to preserve the U.N. security system, they should join in supporting the enforcement of U.N. resolutions; if it is merely to contain the United States, they should not be allowed to succeed. The United States, for its part, must remain open to reasonable compromise. If a few more weeks of diplomacy will serve to assuage the legitimate concerns of undecided council members, the effort—even at this late date—would be worth making.

SOCIAL SECURITY REFORM

Mr. BUNNING. Mr. President, in the upcoming days of the 108th Congress, this legislative body may be called upon to tackle the very important and very difficult issue of Social Security reform. As it currently stands, the Social Security System needs strengthening for the sake of our children and grandchildren. I recently read an article, written by Mises Institute Scholar John Attarian, which takes us back to December 1981, when President Ronald Reagan, alone with House Speaker Tip O'Neill and Senate Majority Leader Howard Baker, created a bipartisan commission to study Social Security and recommend reforms. Alan Greenspan was picked by President Reagan to head-up this commission. This article will provide my fellow colleagues with insightful information regarding past experience with Social Security reform. If we refuse to learn from our previous mistakes and mishaps, we are doomed to travel down the same erroneous and errant path. We can't just kick the can down the road. Raising taxes on benefits and reducing benefits are not an option for Social Security reform.

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

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

ANOTHER GREENSPAN SOCIAL SECURITY REFORM?

(By John Attarian)

On Thursday, February 27, Federal Reserve Chairman Alan Greenspan told the Senate's Special Committee on Aging that we should tackle Social Security sooner rather than later, so as to avoid ''abrupt and painful'' revisions of the program when the baby boomers start retiring. Congress should, he said, consider things like raising the retirement age and changing the annual benefit Cost of Living Adjustment (COLA), before raising the payroll tax, because a payroll tax hike discourages hiring.

''Early initiatives to address the economic effects of baby-boom retirements could smooth the transition to a new balance between workers and retirees. If we delay, the adjustments could be abrupt and painful,'' Greenspan said. He added that Congress should consider switching to a lower inflation rate for the annual COLA, which could save billions in benefit outlays.

Greenspan's words should set off alarm bells in well-informed minds. Almost exactly ten years ago, a National Commission on Social Security Reform headed by Greenspan proposed a package of benefit cuts and tax increases, which Congress enacted with little change, and which turned out to be one of the most oppressive—and underhanded—things Congress ever did to younger Americans over Social Security. It also failed to solve Social Security's long-term problems.

BACKGROUND TO THE GREENSPAN COMMISSION

The 1972 amendments to the Social Security Act not only greatly increased benefits, and created the annual COLA to increase benefits to compensate for inflation, but included an overly generous formula for the COLA which in effect adjusted benefits twice. This plus the inflationary stagnation of the 1970s created Social Security's first funding crisis. To cure it, Congress passed in December 1977, and President Jimmy Carter signed into law, amendments which both undid the overadjustment of benefits and mandated the largest tax increase in American history up till them. Supposedly this would solve the problem permanently.

It didn't. The long-term actuarial deficit fell from a frightening −8.20 percent of taxable payroll to a still-troubling −1.46 percent. Moreover, thanks to inflationary recession, the short-term outlook was calamitous; in 1980, Social Security's Board of Trustees reported a deficit of almost $2 billion in 1979, that by 1982 at the latest, Old-Age and Survivors Insurance (OASI) would be unable to pay benefits on time, and that by calendar 1985 Social Security's trust fund would be exhausted.

So in May 1981, Ronald Reagan's Secretary of Health and Human Services, Richard Schweiker, sent Congress Reagan's proposals for restoring Social Security's solvency.

Instead of another tax hike, Reagan proposed benefit cuts—most importantly, cutting early retirement benefits from 80 percent of the full benefit to 55 percent, and increasing the dollar ''bend points'' in the Average Indexed Monthly Wage formula, which break up income into intervals upon which benefit calculations are based), by 50 percent of the average annual wage increase, not 100 percent.

Reagan walked into a buzz saw. Congressional Democrats, seniors' groups, Social Security architects such as Wilbur Cohen, unions, and others blasted him for ''breaking the social contract,'' and he suffered his first defeat in Congress. In December 1981, he recommended creation of a bipartisan commission to study Social Security and recommend reforms. Reagan picked five members, including economist Greenspan as chairman; House Speaker Thomas ''Tip'' O'Neill picked five; and Senate Majority Leader Howard Baker picked five more. The Greenspan Commission quarrelled bitterly over what to do, missing its December 1982 deadline, and did not issue its report until January 15, 1983.

THE 1983 SOCIAL SECURITY RESCUE

It was just in time. Exhaustion of the Old-Age and Survivors Insurance trust fund was now projected for July 1983, meaning benefit checks wouldn't go out on time. Reagan and Congress moved fast. The Commission's proposals were introduced on January 26; both houses of Congress passed the final version of the rescue legislation on March 25; and Reagan signed it into law on April 20, 1983.

Supposedly, the Greenspan Commission gave politicians a political cover enabling them to bite the bullet on Social Security and even do the unthinkable: cut benefits. Supposedly, the Greenspan Commission's reforms were a compromise between the Republicans, who wanted to cut benefits, and the Democrats, who wanted to raise taxes instead. Supposedly, they therefore spread the pain widely, cutting current benefits, raising current and future taxes, cutting future benefits, and dragging previously exempted persons into Social Security's revenue pool.

Superficially considered, they did. Current beneficiaries had their July 1983 COLA delayed six months, until January 1984, and all beneficiaries would have COLAs paid in January thereafter. For the first time, Social Security benefits were subject to taxation. Beginning in 1984, up to 50 percent of Social Security benefits would be included in taxable income for persons whose sum of adjusted gross income plus taxable interest income plus one-half of Social Security benefits exceeded $25,000 for single beneficiaries and $32,000 for married beneficiaries.

The future tax increases mandated in 1977 were accelerated; the payroll tax rate increase scheduled for 1985 kicked in in 1984 instead, and part of the 1990 increase went into effect in 1988. In addition, the self-employment tax rate, which the 1977 law would have increased to 75 percent of the sum of the employer and employee shares of the Federal Insurance Contributions Act (FICA) tax, was raised to 100 percent of this sum.

Many additional categories of employees were brought under Social Security, including the President, members of Congress, federal judges, federal employees newly hired on or after January 1, 1984, and present and future employees of tax-exempt nonprofit organizations. State and local government employees, who previously were able to opt out of Social Security, no longer could as of April 20, 1983.

The retirement age (the age at which one could qualify for full Social Security benefits) was gradually raised, to reach sixty-six in 2009 and sixty-seven in 2027. One could still retire early and start collecting early retirement benefits at age sixty-two, but the early retirement benefit would be trimmed from 80 percent of the full benefit in 1983, to 75 percent in 2009 and 70 percent in 2027.

THE 1983 RESCUE UNMASKED

But although the pain was indeed spread widely, it was certainly not spread evenly. The distribution of sacrifice was incredibly lopsided, falling least heavily on current beneficiaries and most heavily on current taxpayers, future taxpayers, and future beneficiaries. In other words, the elderly of 1983 were spared any real hardship, and the bulk of the burden was put on those who were young in 1983 and of Americans yet unborn.

In the short-run period of 1983–1989, the majority of the pain was borne by taxpayers, not current beneficiaries. Using its intermediate actuarial assumptions, the Office of the Actuary estimated that the amendments would raise an additional $39.4 billion in this period from the higher FICA tax rates, $18.5 billion from the higher self-employment tax rate, and $21.8 billion form extending Social

Security coverage to those not then in the system. Total estimated additional revenues from current and newly-created taxpayers: $79.7 billion.

The new benefit taxation, which would affect only a minority of the current beneficiaries—only the richest ten percent, according to Phillip Longman's 1987 book Born to Pay: The New Politics of Aging in America—would bring in another $26.6 billion. The only major hit taken by all the current beneficiaries, the delay in COLAs, would cut benefits by $39.4 billion over this six-year period, for total current beneficiary losses of $66.0 billion.

The inequity was even worse in the long run. In 1983, Social Security's actuaries put the long-range actuarial deficit at −2.09 percent of taxable payroll under intermediate assumptions. Raising the retirement age made the largest single contribution to eliminating this deficit, wiping out about a third of it, 0.71 percent of taxable payroll; and this fell entirely upon future beneficiaries.

Benefit taxation increased the long-term income rate by 0.61 percent of taxable payroll—the second-largest contribution to erasing the deficit; it fell somewhat on the (richest) current beneficiaries, but mostly on future ones. These two measures accounted for 1.32 percent of taxable payroll, or almost two-thirds of the long-term actuarial deficit. Most of the rest was eliminated by brining new people (who would initially participate as taxpayers) under Social Security (0.38 percent of taxable payroll), and accelerating the phasing-in of the 1977 tax increase and increasing the self-employment tax rate (0.22 percent).

It turns out, then, that the allegedly broad sharing of sacrifice was in fact engineered to injure, and provoke, the politically powerful current beneficiaries, who with their allies had routed the Reagan Administration in 1981, the least, and put the lion's share of the hurt on the young, including those not even born yet.

Moreover, when we examine how the sacrifice broke down between benefit cuts and tax increases, we see that the broad-based rescue was, in reality, disproportionately based on tax increases. The measures to increase revenues—benefit taxation, accelerated tax increases, the higher self-employment tax rate, and augmenting the revenue base with new participants—reduced the long-term acturial deficit by 1.21 percent of taxable payroll, or almost 58 percent of the total.

Not only that, the Greesnpan Commission's reforms were shot through with serpentine underhandedness. For one thing, the graudal ramping up of the retirement age and cutting of the early retirement benefit were scheduled so as to bite worst in 2027, 44 years after enactment—in other words long after the politicians who had enacted them had left Congress and were safe from retaliation by angry baby boomers on Election Day.

For another, the benefit taxation will hit future generations far harder than it hit the current beneficiaries of the 1980s, because the income thresholds which trigger the taxation, $25,000 and $32,000, were not adjusted for inflation (and still aren't). This means that over time, thanks to inflation, more and more beneficiaries will hit these tax tripwires, just as inflation shoved Americans into higher tax brackets before income tax indexing was enacted in 1981.

Phillip Longman maintained that of all the features of the 1981 rescue, benefit taxation ''most reduces the benefits promised to baby boomers and their children.'' While benefit taxation hit only the richest beneficiaries when enacted, Longman noted, even with the modest rates of inflation which the Social Security actuaries' intermediate analysis assumed, a $25,000 income in 2030 would have less purchasing power than an income of $4,000 in the mid-1980s! ''So by the time the baby boomers qualify for Social Security pensions, the program will be effectively means tested, if it survives at all. Under current law, i.e., including the 1983 amendments, only the poorest baby boomers are even promised a fair return on their contributions to the system.''

How's that for a piece of Byzantine cunning?

Yet for all its heavy burdens, which it imposed with such inequity and insidiousness, the 1983 rescue of Social Security turned out to be only temporarily effective. The 1983 Annual Report of Social Security's Board of Trustees projected long-term actuarial balance for Social Security.

Just five years later, the long-term balance was in deficit again, −0.58 percent of taxable payroll. In 1993, ten years after the great rescue legislation, the long-term actuarial deficit was −1.46 percent. In 1994, thanks to various changes in actuarial assumptions, the Board of Trustees reported a deficit of −2,13 percent—worse than the deficit which the 1983 rescue had erased. The long-term actuarial deficit continued to grow, hitting −2.23 percent of taxable payroll in the 1997 Annual Report.

An improved economic outlook due to the late-1990s prosperity and productivity growth led to optimistic revision of various economic assumptions, and the long-term actuarial deficit began dropping as a result, to −1.87 percent of taxable payroll in the 2002 Annual Report. Nevertheless, the trustees continue to point out that Social Security is not in long-term close actuarial balance and that corrective action is necessary.

To sum up, the 1983 rescue legislation embodying the recommendations of Greenspan's Commission substantially injured the baby boomers and their younger siblings on the sly—and it didn't help.

ANOTHER STEALTH ''RESCUE''?

The lurking menace in Greenspan's recent remarks is that he may be floating a trial balloon for another stealth ''rescue'' of Social Security which pushes the bulk of the pain into the future and doesn't really accomplish much. It is almost certain that any trimming of benefits by the measures Greenspan advocates—raising the retirement age or shifting to a lower inflation rate for the COLA—would scrupulously avoid arousing the politically formidable current elderly, who are not only organized into pressure groups such as the American Association of Retired Persons and the Seniors Coalition, but, as is well known, participate in voting much more heavily than do the young.

Notice that Greenspan wants ''[e]lderly initiatives to address the economic effects of baby-boom retirements.'' What's significant here is that he says nothing about cutting current costs, which have exploded to extremely high levels. Benefit outlays were $141 billion ($386 million a day) in calendar 1981 and $268.2 billion ($735 million a day) in calendar 1991, almost double the 1981 figure. In calendar 2001, Social Security paid $431.9 billion in benefits ($1.18 billion a day), over three times the 1981 cost.

Moreover, this mushroom growth will continue even before the baby boomers swamp Social Security. Under intermediate actuarial assumptions, benefit outlays are projected at $546.7 billion ($1.5 billion a day) for calendar 2006, before any baby boomers retire, and $746.7 billion ($2.05 billion a day), an increase of 72.9 percent over 2001's figure, for calendar 2011, when boomer retirements have just begun.

Then, too, just as the Greenspan Commission's 1983 benefit taxation with trigger income levels unadjusted for inflation is a stealth means test, tinkering with the price index for the COLA is itself an intrinsically insidious way to cut benefits. Rather than cut them directly, it finagles the arithmetic on which their adjustment for inflation is based.

Finally, fiddling with the inflation rate for the COLA may in fact not make all that much difference. Buried toward the end of the February 28 Washington Post piece on Greenspan's remarks was the interesting news that whereas a 1996 commission found that the Consumer Price Index overstated inflation by 1.1 percentage points a year, another study done in 2000 found that improvements in the index made by the Bureau of Labor Statistics had whittled the overstatement down to 0.6 percentage points a year, an improvement of almost 50 percent.

Now, the Social Security actuaries have already factored in the improvements in the Consumer Price Index. Both the improvement in the long term actuarial deficit in recent years and the projected explosion in outlays by 2011 already take the more-accurate index into account. Which leads one to wonder just how much we'd really gain by tinkering with the CPI some more.

So while Greenspan's recent testimony seems like a courageous and tough-minded warning about Social Security, under close scrutiny it looks like the makings of another serpentine but ineffectual attempt to fend off disaster.

ALZHEIMER'S RESEARCH, PREVENTION AND CARE ACT

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues Senators MIKULSKI, BOND, BREAUX, DODD, LINCOLN, LANDRIEU and COCHRAN in introducing this important bipartisan legislation. The Alzheimer's Research, Prevention and Care Act will expand federal efforts to find new ways of treating and preventing Alzheimer's Disease and to provide better care for the 4 million Americans suffering from this devastating illness.

Alzheimer's disease is the most serious threat to the health and well-being of America's seniors. It has a devastating impact on individuals, families, the health care system, and society as a whole. Today, four million Americans have Alzheimer's disease, and that number is expected to grow to 14 million as baby boomers age. Currently, one in 10 people over the age of 65 have Alzheimer's disease, and nearly half of those over 85 suffer from it. This figure is particularly alarming, since the over-85 age group is the fastest growing segment of our population.

The annual cost of formal care for Alzheimer's disease is immense—$100 billion, and the value of the care provided by family caregivers is an additional $196 billion. As the baby boomer generation continues to age, the costs will rise to at least $375 billion a year, which presents a serious challenge to Medicare, Medicaid and our entire health care system.

We can avoid this crisis. Researchers have been working hard to find a cure. Scientists have come close to discovering the scientific causes of Alzheimer's disease. Newly released studies have begun to reveal information

on what aging Americans can do to reduce the risk of developing this devastating disease. One study found that those who consumed the most saturated fat had double the risk of those who consumed the lowest amount. Another study has found that blood pressure played an important role in the risk of developing Alzheimer's disease in those 75 or older. These and other research studies are helping to create a better understanding of why brain cells shrink and die.

Hopefully, we are on the verge of a breakthrough, and scientists deserve greater support in order to make the goal of cure a reality. That is why we must do more to accelerate the research critical to finding a cure. The Act we propose will advance our country toward the goal of doubling the future investment in Alzheimer's disease research at NIH. It authorizes $1.5 billion for the National Institute on Aging by the year 2008, which is the lead NIH institute for this research.

The research funding authorized by the Act will add new speed in the race to prevent this illness that touches the lives of so many Americans. These funds will support the Alzheimer's Disease Prevention Initiative authorized by the act. Prevention is our best opportunity to halt the growth of Alzheimer's disease. Observational studies in large populations suggest that drugs already in wide use in middle-aged and older people may have a protective effect against the disease. Those results must now be validated in large-scale, controlled clinical trials. Among prevention initiatives, the Act authorizes trials to determine whether compounds such as estrogen, vitamin E, ginko biloba and aspirin can prevent the onset of the disease.

The act also authorizes cooperative clinical research at the National Institute on Aging. Clinical trials can cost millions of dollars and involve thousands of participants and years of work. This legislation will enhance these needed trials, develop new ways to design these trials, and make it easier for patients to enroll in key studies. Cooperative research is essential to launching these clinical trials and supporting productive research.

The act also supports research and programs to help millions of family caregivers who provide loved ones with care at home. Seventy percent of those with the disease live at home in which families provide at least 77 percent of their care. It is vitally important to find better ways to help families who are the backbone of our long-term care system. The support they provide is extraordinary, and often jeopardizes their own health. It is unacceptable that one in eight Alzheimer's caregivers becomes ill or injured as a direct result of caregiving. Family caregivers provide the support which prevents these patients from having to enter institutions. This issue is especially important, given the nationwide health workforce shortage in nursing homes.

The act also reauthorizes the Alzheimer's Demonstration Program in the Administration on Aging and increases funding to expand it. This program has been highly successful in pioneering new ways to fill gaps in existing state delivery systems, so that local and community-based programs can do more for underserved populations with Alzheimer's disease. In Massachusetts, the Multicultural Alzheimer's Services Project in Springfield will receive funding through this program to provide information and supportive services to those with Alzheimer's and their caregivers.

We have no time to waste in the battle against Alzheimer's disease. We must act now to accelerate scientific efforts to find a cure and halt the continuing epidemic of the disease. We can improve the lives of millions of Americans by demonstrating our commitment to enhance research, and to support programs that help patients and their families. I urge my colleagues to support this very important legislation.

THE LIFESPAN RESPITE CARE ACT OF 2003

Mr. KENNEDY. Mr. President, it is a privilege to join colleagues Senator CLINTON, WARNER, SNOWE, MIKULSKI, JEFFORDS, MURRAY, BREAUX, COLLINS and SMITH in introducing the Lifespan respite Care Act. The act will authorize grants to promote a coordinated system of accessible respite care services for 26 million Americans who care for a family member or friend who is chronically ill or disabled.

Caregivers today work tirelessly to support their loved ones and help them to maintain their quality of life as effectively as possible. Without this important care, many seniors and people with disabilities would be forced to live in institutions, reducing their quality-of-life and resulting in more costly care.

Services provided by family caregivers are estimated to be worth nearly $200 billion annually. Even if we tried to replace these family caregivers with paid workers, we would face workforce shortages, a serious problem that will only worsen as the baby boom generation reaches retirement age.

By 2010, more than 780,000 additional caregivers must be found to fill long-term staff positions, an increase of 39 percent over the year 2000. We now rely, and we will have to continue to rely, on unpaid caregivers in order to meet the growing need and enable those who receive the care to continue to live in the least restrictive environment possible.

Many family caregivers are themselves suffering from the stress and physical strain of their work. Often, they live the caregiver life, which is frequently called the 36-hour day. They deserve more support in order to do their essential work. Sometimes, the relief they need may be a ''timeout'' for just an hour or two a week to do the grocery shopping or have time to go to the doctor. Other family caregivers may need far more relief. Our bill will provide essential respite care services and ensure that respite care providers are trained appropriately, so caregivers will feel at ease when they leave their loved one with respite providers.

I urge the Senate to support this important legislation that will provide long needed support for the elderly and disabled and that will mean so much to the family caregivers of our Nation.

PROBLEMS WITH THE DEATH PENALTY

Mr. LAUTENBERG. Mr. President, I believe that the death penalty is ineffective, cruel, and unjust. Killing people convicted of criminal offenses under the color of State law is wrong; and the disproportionate execution of a certain class or race of people is utterly unconscionable.

In the United States, although African Americans make up only 12 percent of the overall population, 42 percent of the people currently on death row are Black. African Americans are also overrepresented in the number of people on death row who are later found to be innocent: 38 percent of death row inmates freed since 1973 because of new evidence were African Americans, and 35 percent of those executed and later found to be innocent were Black.

Despite these startling statistics, the State of Texas, President Bush's home State, is determined to execute Americans as fast as possible, even in light of potentially exculpatory evidence.

In today's New York Times, columnist Bob Herbert writes about an American-African man who, in about 48 hours, may become the 300th person executed by the State of Texas since the resumption of capital punishment in 1982.

As Mr. Herbert notes, this case is particularly disturbing because there is strong evidence that the accused, Mr. Delma Banks, Jr., did not commit the capital offense. But, in a blatant disregard for truth and the equitable administration of justice, Texas intends to proceed regardless.

This senseless State-sanctioned killing must stop!

I ask unanimous consent that Mr. Herbert's column in the New York Times dated March 10, 2003, be printed into the RECORD following my remarks.

Thank you, Mr. President.

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

[From The New York Times, Mar. 10, 2003]

COUNTDOWN TO EXECUTION NO. 300

(By Bob Herbert)

The war trumps all other issues, so insufficient attention will be paid to the planned demise of Delma Banks, Jr., a 43-year-old man who is scheduled in about 48 hours to become the 300th person executed in Texas since the resumption of capital punishment in 1982.

Mr. Banks, a man with no prior criminal record, is most likely innocent of the charge that put him on death row. Fearing a tragic miscarriage of justice, three former federal judges (including William Sessions, a former director of the F.B.I.) have urged the U.S. Supreme Court to block Wednesday's execution.

So far, no one seems to be listening.

''The prosecutors in this case concealed important impeachment material from the defense,'' said Mr. Sessions and the other former judges, John J. Gibbons and Timothy K. Lewis, in an extraordinary friend-of-the court brief.

They said the questions raised by the Banks case ''directly implicate the integrity of the administration of the death penalty in this country.''

Most reasonable people would be highly disturbed to have the execution of a possibly innocent man on their conscience or their record. But this is Texas we're talking about, a state that prefers to shoot first and ask no questions at all. Fairness and justice have never found a comfortable niche in the Texas criminal justice system, and the fact that the accused might be innocent is not considered sufficient reason to call off his execution.

(One of the most demoralizing developments of the past couple of years is the fact that George W. Bush has been striving so hard to make all of the United States more like Texas.)

Delma Banks was convicted and sentenced to death for the murder of 16-year-old Richard Whitehead, who was shot to death in 1980 in a town called Nash, not far from Texarkana. There was little chance that this would have been a capital case if both the accused and the victim had been of the same race. Or if the accused had been white and the victim black.

But Mr. Banks is black and Mr. Whitehead was white, and that's the jackpot combination when it comes to the death penalty. Blacks convicted of killing whites are the ones most likely to end up in the execution chamber. In Texas this principle has been reinforced for years by the ruthless exclusion of jurors who are black.

Just two weeks ago the Supreme Court handed down a ruling that criticized courts in Texas for ignoring evidence of racial bias in a death penalty case. Lawyers in the case noted that up until the mid-1970's prosecutors in Dallas actually had a manual that said, ''Do not take Jews, Negroes, Dagos, Mexicans or a member of any minority race on a jury, no matter how rich or well-educated.''

The significant evidence against Mr. Banks was the testimony of two hard-core drug addicts. One was a paid informant. The other was a career felon facing a long prison term who was told that a pending arson charge would be dismissed if he performed ''well'' while testifying against Mr. Banks.

The prosecution deliberately suppressed information about its arrangements with these witnesses—information that it was obliged by law to turn over to the defense.

And prosecutors made sure that all the jurors at Mr. Banks's trial were white. That was routine. Lawyers handling Mr. Banks's appeal have shown that from 1975 through 1980 prosecutors in Bowie County, where Mr. Banks was tried, accepted more than 80 percent of qualified white jurors in felony cases, while peremptorily removing more than 90 percent of qualified black jurors.

The strongest evidence pointing to Mr. Banks's innocence was physical. He was in Dallas, more than three hours away from Texarkana, when Mr. Whitehead was killed, according to the best estimates of the time of death, based on the autopsy results.

Prosecutorial misconduct. Racial bias. Drug-addicted informants. ''This is one-stop shopping for what's wrong with the administration of the death penalty,'' said George Kendall, a lawyer with the NAACP Legal Defense and Educational Fund who is handling Mr. Banks's appeal.

If, despite all that is known about this case, the authorities walk Mr. Banks into the execution chamber on Wednesday, and strap him to a gurney, and inject the lethal poison into his veins, we will be taking another Texas-sized step away from a reasonably fair and just society, and back toward the state-sanctioned barbarism we should be trying to flee.

RELEASE OF VIETNAM NUCLEAR WEAPONS REPORT

Mrs. FEINSTEIN. Mr. President, in the mid-1960s, during the height of the Vietnam War, the Department of Defense commissioned a study to determine the feasibility and advisability of the use of tactical nuclear weapons in that conflict. A copy of that 1967 study, ''Tactical Nuclear Weapons in Southeast Asia'', has just been declassified, and lays out in terrifying detail what might have happened if the United States had used tactical nuclear weapons during the Vietnam war.

The bottom line of the study is that the use of nuclear weapons in Vietnam—to block the Ho Chi Minh trail, kill large numbers of enemy soldiers, or destroy North Vietnamese air bases and seaports—would have offered no decisive military advantages to the United States but would have had grave repercussions for US soldiers in the field and US interests around the world.

The study was prepared by four physicists associated with the Jason Division of the Institute of Defense Analyses, a group of scientists who met frequently to provide classified advice to defense officials. The study's conclusions were presented to then-Secretary of Defense Robert McNamara.

''The political effects of US first use of TNW (tactical nuclear weapons) in Vietnam would be uniformly bad and could be catastrophic,'' the scientists wrote.

They warned that US first-use of tactical nuclear weapons could lead China or the Soviet Union to provide similar weapons to the Viet Cong and North Vietnam, raising the possibility that US forces in Vietnam ''would be essentially annihilated'' in retaliatory raids by nuclear-armed guerrilla forces.

If that happened, they wrote, ''insurgent groups everywhere in the world would take note and would try by all available means to acquire TNW for themselves.'' First-use of nuclear weapons in Southeast Asia, the scientists warned, was ''likely to result in greatly increased long-term risk of nuclear guerrilla operations in other parts of the world,'' including attacks on the Panama Canal, oil pipelines and storage facilities in Venezuela and the Israeli capital of Tel Aviv.

''US security would be gravely endangered if the use of TNW by guerrilla forces should become widespread,'' they concluded.

Thirty-six years later some American officials are, according to press reports, once again contemplating the use of nuclear weapons, and seeking to repeal US prohibitions on the developments of smaller nuclear weapons, including so-called ''low-yield'' bombs and deep-penetration ''bunker-busters.''

Writing recently in the Los Angeles Times, military analyst William Arkin disclosed the US Strategic Command in Omaha and the Joint Chiefs of Staff are secretly drawing up nuclear target lists for Iraq. ''Target lists are being scrutinized, options are being pondered and procedures are being tested to give nuclear armaments a role in the new U.S. doctrine of 'preemption,''' Arkin reported.

There have also been reports that tactical nuclear weapons, particularly ''bunker busters,'' have been considered by Pentagon planners in the context of the escalating nuclear crisis with North Korea. Moreover, many US analysts believe there is a great danger that North Korea, if its survival was at stake, would be willing to sell its nuclear arsenal to the highest bidder.

North Korea itself apparently believes the United States may be planning nuclear strikes of its own, and on March 1 warned that a war on the Korean peninsula would quickly ''escalate into a nuclear war.''

I sincerely believe that any first use of nuclear weapons by the United States cannot and should not be sanctioned. As the Jason scientists argued in the 1960s, U.S. nuclear planning could serve as a pretext for other countries and, worse, terrorist groups such as al-Qaida, to build or acquire their own bombs. If we are not careful, our own nuclear posture could provoke the very nuclear-proliferation activities we are seeking to prevent.

This study, ''Tactical Nuclear Weapons in Southeast Asia'', was released this past weekend by the Nautilus Institute of Berkeley, CA, and I would urge those with an interest in reading it in full to contact them directly.

The conclusions of the Jason report are as valid, realistic and frightening today as they were in 1967. As we contemplate the future course of our nation's national security policy, I believe that it is important to look at past events, to learn from them, and to benefit from the counsel of history.

TIBETAN DAY OF COMMEMORATION

Mrs. FEINSTEIN. Mr. President, today commemorates the forty-fourth anniversary of the 1959 ''Lhasa Uprising.''

I offer my comments today in the sincere hope that it will promote a constructive dialogue between Chinese and Tibetan leaders, and with the goal of ending the bitter divisiveness now plaguing relations between China and Tibet.

When, following the Chinese invasion in 1949–1950, Tibet was established as an autonomous region in the People's Republic of China, the Tibetan people were granted the right of autonomy in determining the shape of their religious, cultural and social institutions. China's leadership is on record as agreeing to this principle.

Unfortunately, between 1951 and 1959 the government of the People's Republic of China did not uphold these guarantees of autonomy, leading to the 1959 Lhasa Uprising and the flight of the Dalai Lama from Tibet. During the past 44 years, tens of thousands of Tibetans have been forced to flee their homeland in the face of continued Chinese repression and violation of their right to religious and cultural autonomy. I find this a tragedy.

Nonetheless, the Dalai Lama, in seeking to engage with China's leadership to discuss the future of the Tibetan people, has specifically cited that he is not seeking independence for Tibet, that he is willing to confine his discussions to achieving cultural and religious autonomy for his people, and that he is willing to negotiate within the framework enunciated by Deng Xiaoping in 1979.

Indeed, in his statement today on the ''44th Anniversary of the Tibetan National Uprising,'' the Dalai Lama stated that ''As far back as the early seventies in consultation with senior Tibetan officials I made a decision to seek a solution to the Tibetan problem through a ''Middle Way Approach.'' This framework does not call for independence and separation of Tibet. At the same time it provides genuine autonomy for the six million men and women who consider themselves Tibetans to preserve their distinctive identity, to promote their religious and cultural heritage that is based on a centuries-old philosophy which is on benefit even in the 21st century, and to protect the delicate environment of the Tibetan plateau. This approach will contribute to the overall stability and unity of the People's Republic of China.''

Over the past 12 years I have made every effort to encourage rapprochement between China and Tibet, including helping to pass messages from His Holiness, the Dalai Lama to China. I believe the Dalai Lama is absolutely sincere in his desire to negotiate a peaceful solution to what has been a great tragedy for the Tibetan people.

This past September the Chinese government made it possible for two envoys of the Dalai Lama to visit Beijing to re-establish direct contact with the Chinese leadership, and to visit Tibet to meet with local Tibetan officials. This trip was, in my view, very significant, very encouraging, and very meaningful.

Nonetheless, much remains to be done if the people of Tibet are to achieve freedom and autonomy in determining the shape of their society. It is my sincere hope that China's new leadership will extend the hand of cooperation in resolving differences with Tibet.

INTERNATIONAL WOMEN'S DAY

Mrs. FEINSTEIN. Mr. President, no one can deny the contributions women and children have made to this country and the world. In government, business, education, medicine, the arts, and athletics, women have met and exceeded the great challenges placed before them. It is altogether fitting, then, that we set aside one day every year to pay tribute and acknowledge these accomplishments: March 8, 2003 is International Women's Day.

On this day, we celebrate the progress women and girls have made over the years, but we also renew our commitment to create a better world and bestow a better future to women and girls in every country. We must not rest on our laurels until all women and girls enjoy basic human rights and have the opportunity to fulfill their life dreams.

Rarely does a day go by when we do not hear the news of a woman fighting for those rights and those dreams, whether it be a girl struggling to get an education in Afghanistan, a mother desperately seeking to provide for her children in sub-Saharan Africa, or a woman expressing her views in the streets of Venezuela. We who enjoy the blessings of liberty and democracy have an obligation to raise our voice on behalf of these women and girls to let them know that they are not alone and we are fighting for them.

All over the world, women and girls are looking to the United States for leadership and I would like to take this time to address several critical issues that I believe are vital to their lives: international family planning assistance, the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW, rape as an instrument of war, and the plight of women in Afghanistan.

Honest differences of opinion exist on this issue, but I believe that those of us in Congress who support a robust package of U.S. assistance to international family planning organizations must not back down. I was dismayed when on July 22, 2002 Secretary of State Colin Powell decided to withhold the $34 million U.S. contribution to the United Nations Population Fund, UNFPA—an amount allocated to it by law and after months of negotiation and with bipartisan support—because he determined that UNFPA participated in coercive family planning programs in China. The administration's decision to withhold the funds and withhold $25 million for Fiscal Year 2003 runs counter to common sense and counter to the findings of its own investigative team.

Just over a month earlier a three member State Department team investigated UNFPA programs in China and concluded quite clearly that there was no evidence that UNFPA supported or participated in coercive family planning programs and recommended that it receive the full U.S. $34 million contribution. Nevertheless, the Administration chose to ignore these findings and, in doing so, struck a terrible blow to U.S. leadership in combating overpopulation.

One can not underestimate the importance of family planning assistance, especially for the poor. The United Nations estimates that the world's population will double to 12 billion by the year 2050. Most of this growth will occur in countries least able to sustain it and educational and medical services will suffer greatly as a result. In the age of global terrorism where groups such al-Qaida find new recruits among the poor, the sick, and the uneducated, this is especially troubling.

No woman should be prevented from receiving the assistance she deserves to plan and care for healthy families. When we help them, we reduce poverty, improve health, and raise living standards.

Each and every dollar the United States spend on international family planning assistance—none of which, I might add, is spent on international abortion—is one less dollar we will have to spend on costlier interventions in the future.

So many of my colleagues share my view and together we must work harder to ensure that the United States reclaims its leadership role on international family planning and reproductive issues. On International Women's Day, I urge my colleagues to support full funding for the UNFPA and other international family planning programs.

Sadly, another year has gone by and the United States still has not yet ratified the Convention to Eliminate All Forms of Discrimination Against Women. As Americans, we can no longer afford to ignore this important document and put in jeopardy our status as a leader in advancing human rights for women and girls.

Given that it has been over 20 years since President Carter signed the Convention, one might think that the delay in ratification is due to the fact we are dealing with a treaty that requires years of study and consideration. Yet the Convention simply requires that participating states take all appropriate steps to eliminate discrimination against women in political and public life, law, education, employment, health care, commercial transactions, and domestic relations.

We are alone among the leading democracies in our failure to ratify. In fact, our partners outside the Convention include Iran, North Korea, and Sudan. Are these the countries with whom we share our values of democracy, freedom, and respect for human rights? Are these the countries we can count on in the international arena?

Women and girls around the world who turn to the United States for leadership in advancing their rights are

mystified that we do not take the simple step of ratifying the Convention. When we do, the sky will not fall, the sun will rise in the morning, and the Constitution will still be the law of the land.

By ratifying the Convention, the United States will reclaim its leadership status as a champion of the rights of women and girls and send a strong signal of warning to those states who abuse those rights.

On International Women's Day, I call on my colleagues in the Senate to move forward and ratify the Convention.

The use of rape as an instrument of war is a gross violation of the basic human rights of women and girls and I have worked hard over the years to raise awareness about this issue. The United States must work closely with our friends and allies in the international community to eliminate this practice once and for all.

We have seen far too often in recent years how soldiers have used rape in an organized, systematic, and sustained manner to intimidate, spread fear, and ethnically cleanse entire communities. In Bosnia, Rwanda, and East Timor, women were kidnaped, interned in camps and houses, forced to do labor and subjected to frequent rape and sexual assault.

Those who committed these crimes did not believe that anyone was watching. They were wrong.

On February 22, 2001, the international tribunal in the Hague sentenced three Bosnian Serbs to prison for rape during the Bosnian war. Judge Florence Mumba of Zambia stated, ''Lawless opportunists should expect no mercy, no matter how low their position in the chain of command.''

Last year, in response to a report coauthored by the Shan Women's Action Network and the Shan Human Rights Foundation, I and 31 other Senators wrote to UN Secretary General Kofi Annan to urge him to investigate rape cases by Burmese soldiers between 1996 and 2001 involving 625 women and girls.

The report was based on interviews with refugees on the Thai-Burmese border. It found that the rapes were committed mostly by officers in front of their troops and that 61 percent were gang rapes and 25 percent ended in the murder of the victims. The victims included girls as young as 5 years old.

The Burmese junta did not make a serious effort to investigate the cases. It called the report ''totally false and unjust'' and sought to discredit the authors.

Those who committed these heinous crimes in Burma must be brought to justice. The United States and the international community must continue to put pressure on the Burmese regime to come clean and take substantive action to punish those responsible.

I commend the victims who overcame their fears to report what happened in Burma. I am hopeful more women and girls who have suffered the same crime will come forward and speak up. On International Women's Day, I urge the administration and our friends and allies to join me in continuing the fight to end the practice of rape as an instrument of war.

The situation for most women and girls in Afghanistan has improved since the fall of the Taliban. Nevertheless, there is still a great deal of work to be done and I am concerned that the administration is not paying enough attention to the reconstruction of Afghanistan in general and the condition of women and girls in particular.

The United States Congress made a strong statement in support of the women and girls of Afghanistan by passing the ''Afghan Women and Children Relief Act of 2001'' and the ''Afghan Freedom Support Act of 2002''. Now we must follow up with sufficient funding. I was proud to co-sponsor an amendment to the Fiscal Year 2003 Omnibus appropriations bill that directed $8 million of the money appropriated for humanitarian aid to Afghanistan towards programs that support women's development: $5 million to the Ministry of Women's Affairs, $1.5 million to the Human Rights Commission, and the rest to USAID.

The future for women and girls in Afghanistan is by no means assured. There are credible reports that in Herat, the local governor Ismail Khan has censored women's groups, intimidated women leaders, and removed women from his administration. In all parts of Afghanistan, women still fear abuse from authorities, avoid attending school, and face undue harsh restrictions.

I am particularly concerned to learn of reports that police in Herat are detaining women and girls caught with unrelated men and forcing them to undergo medical examinations to determine if they recently had sexual intercourse. I and my colleague from California, Senator BOXER, wrote to Secretary of Defense Donald Rumsfeld and Secretary of State Colin Powell urging them to put pressure on Ismail Khan to stop these practices and do more to protect the rights of women and girls.

Our victory in Afghanistan will be lost if women and girls are not afforded basic human rights. On International Women's Day, let us reaffirm our commitment to them for a better future and let us let them know that we will not turn our backs on them again.

We must debate and ratify the Convention on the Elimination of All Forms of Discrimination Against Women. We must rededicate ourselves and our resources to international family planning programs. We must not ignore the use of rape as an instrument of war. We must help the women and girls of Afghanistan realize their hopes and dreams.

We cannot afford to remain silent. We cannot afford to place women's rights on a second tier of concern of U.S. foreign policy. On International Women's Day, the United States and the international community must take a strong stand and issue a clear warning to those who attempt to rob women of basic rights that the world's governments will no longer ignore these abuses, or allow them to continue without repercussion.

TRIBUTE TO BRUCE GWINN

Mr. DODD. Mr. President, I rise today to pay tribute to a special friend and outstanding public servant, Bruce Gwinn, who passed away on January 29, 2003, following a year-long battle with cancer.

I share the grief of many here in Washington who came to know and love Bruce Gwinn in the course of his 30 years working on Capitol Hill. And, of course, my most heartfelt sympathies go out to Bruce's wife, May, his three children, Dylan, Maria and Byron, and his entire extended family.

Bruce was born and raised in Charleston, SC, and graduated from Duke University in 1971. After serving in the Army, Bruce moved to Washington to begin a career in public service. Following my election to the House of Representatives in 1974, Bruce came to work for me as my first Legislative Director, and he served with me right up until I was elected to the Senate in 1980.

Bruce was far more than a superb advisor—he was a valued and trusted friend.

From 1981 to 1990, Bruce worked as a professional staffer on the House Energy and Commerce Subcommittee on Consumer Protection, where he served under three chairman. He then served as a senior policy advisory for the House Government Reform and Oversight Committee, where he was responsible for all regulatory issues.

In 1997, Bruce returned to work on the Energy and Commerce Committee, where he served as Congressman JOHN DINGELL's top advisor on international trade policy. True to inform, he worked full-time right up until days before he passed away.

Bruce Gwinn was of a rare and special breed. He was known by everyone with whom he came in contact as a supreme optimist. Although he had his share of challenges in life, Bruce was always thankful for what he had, and always thought the best of others. People were naturally drawn to Bruce because of his contagious smile and enormous heart. And he had the most uncanny ability to diffuse any tense situation with his endearing sense of humor.

Although Bruce was a very soft-spoken man, when he spoke, you knew you could take his words to the bank. He was as knowledgeable as anyone on Capitol Hill, on a whole variety of issues.

At any point in the past 20 years, Bruce could have taken his expertise on trade, commerce, consumer protection, and other important matters, and

left the Hill for more lucrative employment.

Bruce chose to stay in government. This surprised nobody. Bruce chose to stay in government because that's where he felt he could best serve the interests of hard-working Americans and their families. He chose to stay in government because he wanted to dedicate himself to improving the lives of others. Bruce Gwinn was, above all, an extraordinarily dedicated public servant.

Edmund Burke once said, ''There is no greater glory than to work for the public's good.''

Bruce lived by those words every day, and our nation owes him a debt of gratitude.

Mr. President, Bruce Gwinn's life was cut short—he was only 53 years old, and in the prime of his life. And he will be terribly missed.

But I came to the Floor of the Senate today not simply to mourn a loss—I came to the Floor to celebrate a life. The life of Bruce Gwinn was truly a life well-lived. He touched so many, and everyone of us he touched is a better person because of it. I am proud to have worked with Bruce, and lucky to have had him as a friend.

I thank the President.

ADDITIONAL STATEMENTS

LOCAL LAW ENFORCEMENT ACT OF 2001

● Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred September 28, 2001 in Falls Church, VA. A man of Middle-Eastern descent had to flee in his car from another driver, who repeatedly rammed and chased him in his vehicle. Police said that the assailant, a white male 50- to 60-years-old, yelled racial slurs at the victim while attacking him with his car. The victim was able to escape without serious injuries.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.●

SALUTE TO DOTTIE ASHLEY

● Mr. HOLLINGS. Mr. President, I wish to congratulate Dottie Ashley for receiving the prestigious Elizabeth O'Neill Verner Award from the South Carolina Arts Commission. As a longtime arts writer for my hometown newspaper, the Post and Courier, Dottie has done as much to promote cultural life in Charleston for the last decade as anyone in our city.

This is an honor well deserved. I ask to print in the RECORD an excerpt of a recent Post and Courier article, so that all my colleagues can see the accomplishments of this wonderful southern lady.

The article follows:

[From the Post and Courier, February 27, 2003]

LOCAL ARTIST, ARTS WRITER, CULTURAL AFFAIRS OFFICE AMONG VERNER WINNERS

(By Dave Munday)

Dottie Ashley has been at the Post and Courier since 1991, following 15 years at The State newspaper. She has covered the Spoleto Festival since it started, the commissioners said. They also noted that she: Won a fellowship to the Eugene O'Neill Theater Center in Connecticut to review new plays; won a dance critics' fellowship to Russia to observe the classic Vaganova method of teaching ballet; won the American Dance Festival Critics' Award to Duke University; was chosen by the Partners of the Americas to represent the state in South America in 1982 and 1984.

The Columbia Record won a Verner Award in 1981 when Ashley was arts editor, and The Post and Courier won the award in 1994 when she was chief arts writer.

''Her reviews and weekly Arts in her Charleston column offer comprehensive, sensitive coverage of the Charleston area's arts and cultural life, and her in-depth reviews of New York theater have expanded audiences for theater by all readers,'' the commissioners said in a statement.●

TRIBUTE TO DUFFY SUTTON

● Mr. BUNNING. Mr. President, I rise today to honor and pay tribute to Kentucky Vehicle Enforcement Officer Duffy Sutton for receiving the Jason Cammack Officer of the Year Award. Officer Sutton's commitment, dedication, and devotion to service have earned him this award. The award is named after Jason Cammack who was a good friend of Duffy Sutton. Jason died during 2000 while in pursuit of a vehicle in Midway, KY.

As a Kentucky Vehicle Enforcement Officer, Sutton has, throughout the past 4 years, written 1,203 citations, issued 242 warnings, conducted 508 safety inspections, opened 29 cases, secured six DUI's and totaled 60 arrests. For 3 consecutive years, he has won the Buckle Up Kentucky Enforcement Award. Officer Sutton began his career in 1988 as a weigh-station inspector where he has progressed to becoming a vehicle enforcement officer serving 7 southeastern Kentucky counties.

Officer Sutton has also contributed to fighting the war on drugs. To his credit, one of the largest drug busts in Kentucky history took place in 1997 after pulling over a tractor-trailer carrying 839 pounds of marijuana. In a later arrest, Officer Sutton was responsible for seizing 51 pounds of marijuana.

The example set by Officer Sutton should be recognized by law enforcement officers throughout Kentucky. Fighting the war on drugs, securing our homeland, and ensuring that Kentucky roads and highways are as safe as possible depend on law enforcement officers with the caliber of Duffy Sutton. His demonstration of public service on and off duty provide a model example for citizens throughout Kentucky and across America.●

WILLIAM C. CHANDLER, ''MR. YMCA''

● Mr. SESSIONS. Mr. President, today I pay tribute to an outstanding citizen of the great state of Alabama, William C. Chandler.

For over 50 years, Mr. Chandler's mission has been to help the youth and community around him. His work and endeavors have improved the lives of so many disadvantaged children and greatly enriched the Montgomery community. The foundation of good will he has laid will undoubtedly continue to help countless more as he settles into retirement.

His career began in 1945 when he received his Naval ROTC Officer commission and served 16 months in the Pacific theater. Upon returning, he finished two degrees, taught mathematics and became assistant director at the Young Men's Christian Association, YMCA, in Athens, GA. Two years later, in 1956, he moved to Alabama where he spent the next 54 years working hard to help the children and families of Montgomery, starting as the Boy's Work Secretary and as a Junior Lion's Camp Director. When he got to Montgomery, the YMCA program was very small and in need of financial support. Though the program was small and not well supported, Mr. Chandler had a larger and more significant vision for the Montgomery YMCA. He spearheaded their Capital Campaign and raised over $1 million, a truly impressive amount considering it was the 1950s. With this money, two more local YMCA facilities were introduced, with even more being built in the 1960s and 70s. Today these facilities serve over 65,000 people each year in seven local counties.

Though Mr. ''YMCA,'' as he is popularly called, centered most of his time and efforts around the YMCA, he also founded many other types of programs to help young women and local families. Included in these are the Alabama Youth in Legislature Program, which gives high school students a hands-on experience with the government. He also started the Hi-Y and Tri-Y programs, which are social and service organizations for high school aged men and women. He also began the Moral Education Program for young men and women; created the Jimmy Hitchcock Award, honoring outstanding high school Christian youth; launched the Montgomery Lions International Youth Camp; and, started the Youth to Europe Program. He also established the After School Child Care Program,

currently serving more than 3,000 children, began the ''Success by Six'' Program, which teaches young children how to lead good lives by the time they're six, as well as the ''Gift of Life'' Program, helping mothers and their children in need of help.

In addition, to the great many programs he established, Mr. Chandler served in several significant and distinguished roles throughout his career. Beginning in 1953, he became General Director of the Montgomery YMCA, which he served in until May, 2002. In the 1960s, he served as the Chairman of the Helen Keller Memorial Project of the Montgomery Lions Club and then became their chapter president 1965. He also held a large leadership role in the YMCA Youth Conference on National Affairs, and became Lions Club International President in 1980, during which he visited 42 countries meeting with many dignitaries, including Pope John Paul II.

For his great work, Bill has been awarded many honors, including 18 International President's Awards, the Melvin Jones Extension Award, the Key Member Award and the District Governor's Extension Award. He is a Melvin Jones Fellow, and a recipient of the Ambassador of Goodwill Award, the highest honor a Lion can receive from the association. He is also the recipient of three very prestigious awards, including the Montgomery Advertiser's ''Citizen of the Year'' award, the Alabama Journal's ''Citizen of the Year'' award in 1991, and he was named Montgomery's ''Man of the Year'' in 2001.

Mr. Chandler's many good deeds can never be counted because his charitable pursuits were countless and often done anonymously. He is an example of a great statesman and leader. He has helped so many people, particularly those in need, and has served as a great role model for the young lives he has so generously helped.

I am very proud of his great work. I have seen him lead for good in a host of areas. For a time, I served on his YMCA board. It was easy to see the love and respect those outstanding city leaders had for Bill. It was a respect fairly earned and came as a product of a long and productive life of able service to those less fortunate. I have had the great opportunity in my life of over one half a century to meet and know many great and selfless Americans. As the leader the YMCA and of Alabama's Lions Club, of which I am one, I have seen his unsurpassed, and remarkable leadership for good. I know Bill will continue to help those around him, even in retirement. I applaud his tireless efforts on behalf of all Alabamians and would like to take this opportunity to thank him for all that he has contributed to Montgomery, the State of Alabama, and our Nation.

I ask my colleagues to join me today in recognizing Mr. William Chandler for his outstanding achievements and wish him well in his retirement.●

MESSAGE FROM THE HOUSE

At 3:26 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 13. An act to reauthorize the Museum and Library Services Act, and for other purposes.

MEASURE REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 13. An act to reauthorize the Museum and Library Services Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1455. A communication from the Director, Office of the Inspector General, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Debarments and Suspensions of Health Care Providers from the Federal Employees Health Benefits Program'' received on March 3, 2003; to the Committee on Governmental Affairs.

EC–1456. A communication from the Director, Office of Personnel Management, Office of the Inspector General, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Part 576, title 5, code of Federal Regulations, Voluntary Separations Incentive Payments (3206–AJ76)'' received on March 3, 2003; to the Committee on Governmental Affairs.

EC–1457. A communication from the Acting Deputy Chief, Regulations & Procurement Division, Alcohol and Tobacco Tax Trade Bureau, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Health Claims and Other Health-Related Statements in the Labeling and Advertising of Alcohol Beverages (RIN1512–AB97)'' received on March 6, 2003; to the Committee on Finance.

EC–1458. A communication from the L.M. BYNUM, Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''TRICARE Program; Double Coverage; Third-Party Recoveries (0720–AA52)'' received on March 3, 2003; to the Committee on Armed Services.

EC–1459. A communication from the Director, Defense Advanced Research Projects Agency, Department of Defense, transmitting, pursuant to law, the report relative to the Defense Advanced Research Projects Agency (DARPA) developing a strategic plan, received on March 3, 2003; to the Committee on Armed Services.

EC–1460. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Aluminum tris (O-ethylphosphonate); Pesticide Tolerance (FRL 7292–6)'' received on March 5, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1461. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule ''Animal Health Protection Act, Revision to Authority Citations (Doc. No. 02–076–1)'' received on March 3, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1462. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule ''Exotic Newcastle Disease Addition to Quarantined Area (Doc. No. 02–117–4)'' received on March 3, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1463. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule ''Remove Texas from Lists of States Approved to Receive Stallions and Mares from CEM-Affected Regions (Doc. No. 03–004–1)'' received on March 3, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1464. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule ''Swim Health Protection (Doc. No. 03–008–1)'' received on March 3, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1465. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule ''Witchweed, Regulated Areas (Doc. No. 02–042–1)'' received on March 3, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1466. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Boll Weevil Eradication Loan Program (0560–AG69)'' received on March 3, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1467. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Implementation of the United States Warehouse Act (0560–AG45)'' received on March 3, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1468. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Tobacco Marketing Quotas, Acreage Allotments and Production Adjustment (0560–AG51)'' received on March 3, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1469. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''1,3 Benzene Dicarboxylic Acid, 5-Sulfo-,1,3-Dimethyl Ester, Sodium Salt, Polymer with 1,3-Benzene Dicarboxylic Acid, 1,4-Benzene Dicarboxylic Acid, Dimethyl 1,4-Benzene Dicarboxylate and 1,2-Ethanediol; Tolerance Exemption (FRL 7290–9)'' received on March 6, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1470. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Pyriproxyfen; Pesticide Tolerance (FRL 7289–6)'' received on March 6, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1471. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled ''Documentation of Immigrants Under the Immigration and Nationality Act, as Amended—

Issuance of New or Replacement Visas (RIN 1400-AB39)'' received on March 4, 2003; to the Committee on the Judiciary.

EC–1472. A communication from the Deputy Associate Attorney General and White House Liaison, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, the report of a vacancy and the designation of an acting officer for the position of Commissioner, received on March 3, 2003; to the Committee on the Judiciary.

EC–1473. A communication from the Deputy Associate Attorney General and White House Liaison, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Attorney General, received on March 3, 2003; to the Committee on the Judiciary.

EC–1474. A communication from the Deputy Associate Attorney General and White House Liaison, United States Parole Commission, Department of Justice, transmitting, pursuant to law, the report of a nomination and a nomination withdrawn for the position of United States Parole Commissioner, received on March 3, 2003; to the Committee on the Judiciary.

EC–1475. A communication from the Deputy Associate Attorney General and White House Liaison, United States Parole Commission, Department of Justice, transmitting, pursuant to law, the report of a nomination and a nomination withdrawn for the position of United States Parole Commissioner, received on March 3, 2003; to the Committee on the Judiciary.

EC–1476. A communication from the Deputy Associate Attorney General and White House Liaison, Foreign Claims Settlement Commission, Department of Justice, transmitting, pursuant to law, the report of a nomination and a nomination withdrawn for the position of Member, Foreign Claims Settlement Commissioner, received on March 3, 2003; to the Committee on the Judiciary.

EC–1477. A communication from the Deputy Associate Attorney General and White House Liaison, Foreign Claims Settlement Commission, Department of Justice, transmitting, pursuant to law, the report of a nomination and a nomination withdrawn for the position of Member, Foreign Claims Settlement Commission, received on March 3, 2003; to the Committee on the Judiciary.

EC–1478. A communication from the Deputy Associate Attorney General and White House Liaison, Office of The Associate Attorney General, Department of Justice, transmitting, pursuant to law, the report of a vacancy for the position of Associate Attorney General, received on March 3, 2003; to the Committee on the Judiciary.

EC–1479. A communication from the Deputy Associate Attorney General and White House Liaison, Bureau of Justice Statistics, Department of Justice, transmitting, pursuant to law, the report of a nomination and a nomination confirmed for the position of Director, received on March 3, 2003; to the Committee on the Judiciary.

EC–1480. A communication from the Director, Regulations and Forms Services Division, Immigration and Naturalization, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Automated Inspection Service-Extension of Enrollment Period (RIN 1115–AG94)'' received on March 5, 2003; to the Committee on the Judiciary.

EC–1481. A communication from the Secretary of Energy, Department of Energy, transmitting, pursuant to law, the Department of Energy Fleet Alternative Fuel Vehicle Acquisition Report for Fiscal Year 2001; to the Committee on Energy and Natural Resources.

EC–1482. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–632 ''Initiative Measure No. 62 Applicability and Fiscal Impact Temporary Amendment Act of 2003'' received in March 5, 2003; to the Committee on Governmental Affairs.

EC–1483. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–630 ''Crispus Attucks Development Corporation Real Property Tax Exemption and Equitable Real Tax Relief Temporary Act of 2003'' received on March 5, 2003; to the Committee on Governmental Affairs.

EC–1484. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–631 ''Housing Production Trust Fund Continuing Basis Definition Temporary Amendment Act of 2003'' received on March 5, 2003; to the Committee on Governmental Affairs.

EC–1485. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–633 ''Fiscal Year 2003 Use of the Budgeted Reserve Funds During the Continuing Resolution Temporary Act of 2003'' received on March 5, 2003; to the Committee on Governmental Affairs.

EC–1486. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–629 ''Master Business Registration Delay Temporary Act of 2003'' received on March 5, 2003; to the Committee on Governmental Affairs.

EC–1487. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–628 ''Establishment of the Capitol Hill Business Improvement District Temporary Amendment Act of 2003'' received on March 5, 2003; to the Committee on Governmental Affairs.

EC–1488. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 15–21 ''Draft Master Plan for Public Reservation 13 Temporary Amendment Act of 2003'' received on March 5, 2003; to the Committee on Governmental Affairs.

EC–1489. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 15–20 ''Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003'' received on March 5, 2003; to the Committee on Governmental Affairs.

EC–1490. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 15–19 ''Interim Disability Assistance Temporary Amendment Act of 2003'' received on March 5, 2003; to the Committee on Governmental Affairs.

EC–1491. A communication from the Executive Officer, National Science Board, transmitting, pursuant to law, the National Science Board's annual report to Congress; to the Committee on Governmental Affairs.

EC–1492. A communication from the Secretary of Education, transmitting, pursuant to law, the annual report relative to surplus Federal real property disposed of to educational institutions; to the Committee on Governmental Affairs.

EC–1493. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the Performance and Accountability Report for Fiscal Year 2002, received on March 3, 2003; to the Committee on Governmental Affairs.

EC–1494. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Semiannual Report of the Office of the Inspector General for the Department of Transportation; to the Committee on Governmental Affairs.

EC–1495. A communication from the U.S. Merit Systems Protection Board, transmitting, pursuant to law, the report of the Fiscal Year 2003 and Fiscal Year 2004 (FINAL) Performance Plan; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CAMPBELL, from the Committee on Indian Affairs, without amendment:

S. 162. A bill to provide for the use of distribution of certain funds awarded to the Gila River Pima-Maricopa Indian Community, and for other purposes (Rept. No. 108–17).

S. 222. A bill to approve the settlement of the water rights claims of the Zuni Indian Tribe in Apache County, Arizona, and for other purposes (Rept. No. 108–18).

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. LUGAR:

S. 580. A bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Russia; to the Committee on Finance.

By Mr. WYDEN (for himself and Mr. HATCH):

S. 581. A bill to establish a Citizens Health Care Working Group to facilitate public debate about how to improve the health care system for Americans and to provide for a vote by Congress on the recommendations that are derived from this debate; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BUNNING:

S. 582. A bill to authorize the Department of Energy to develop and implement an accelerated research and development program for advanced clean coal technologies for use in coal-based electricity generating facilities and to amend the Internal Revenue Code of 1986 to provide financial incentives to encourage the retrofitting, repowering, or replacement of coal-based electricity generating facilities to protect the environment and improve efficiency and encourage the early commercial application of advanced clean coal technologies, so as to allow coal to help meet the growing need of the United States for the generation of reliable and affordable electricity; to the Committee on Finance.

By Mrs. HUTCHISON:

S. 583. A bill to require the provision of information to parents and adults concerning bacterial meningitis and the availability of a vaccination with respect to such disease; to the Committee on Health, Education, Labor, and Pensions.

By Ms. LANDRIEU:

S. 584. A bill to direct the Consumer Product Safety Commission to promulgate a rule that requires manufacturers of certain consumer products to establish and maintain a system for providing notification of recalls of such products to consumers who first purchase such a product; to the Committee on Commerce, Science, and Transportation.

By Mr. NELSON of Florida (for himself, Mr. LIEBERMAN, Mrs. MURRAY,

Mr. REID, Mr. DAYTON, Mr. ROCKEFELLER, and Mr. COLEMAN):

S. 585. A bill to amend title 10, United States Code, to repeal the requirement for reduction of SBP survivor annuities by dependency and indemnity compensation; to the Committee on Armed Services.

ADDITIONAL COSPONSORS

S. 2

At the request of Mr. NICKLES, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 2, a bill to amend the Internal Revenue Code of 1986 to provide additional tax incentives to encourage economic growth.

S. 50

At the request of Mr. JOHNSON, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 50, a bill to amend title 38, United States Code, to provide for a guaranteed adequate level of funding for veterans health care, and for other purposes.

S. 98

At the request of Mr. ALLARD, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 98, a bill to amend the Bank Holding Company Act of 1956, and the Revised Statutes of the United States, to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes.

S. 215

At the request of Mrs. FEINSTEIN, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 215, a bill to authorize funding assistance for the States for the discharge of homeland security activities by the National Guard.

S. 287

At the request of Mr. BENNETT, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 287, a bill to amend the Internal Revenue Code of 1986 to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 321

At the request of Mr. MCCAIN, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 321, a bill to provide for the establishment of a scientific basis for new firefighting technology standards, improve coordination among Federal, State, and local fire officials in training for and responding to terrorist attacks and other national emergencies, and for other purposes.

S. 324

At the request of Mr. LEVIN, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 324, a bill to amend the National Trails System Act to clarify Federal authority relating to land acquisition from willing sellers for certain trails in the National Trails System.

S. 330

At the request of Mr. CAMPBELL, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 330, a bill to further the protection and recognition of veterans' memorials, and for other purposes.

S. 338

At the request of Mr. LAUTENBERG, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 338, a bill to protect the flying public's safety and security by requiring that the air traffic control system remain a Government function.

S. 363

At the request of Ms. MIKULSKI, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 363, a bill to amend title II of the Social Security Act to provide that the reductions in social security benefits which are required in the case of spouses and surviving spouses who are also receiving certain Government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation.

S. 457

At the request of Mr. LEAHY, the names of the Senator from Rhode Island (Mr. CHAFEE) and the Senator from South Carolina (Mr . HOLLINGS) were added as cosponsors of S. 457, a bill to remove the limitation on the use of funds to require a farm to feed livestock with organically produced feed to be certified as an organic farm.

S. 501

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 501, a bill to provide a grant program for gifted and talented students, and for other purposes.

S. 509

At the request of Mrs. FEINSTEIN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 509, a bill to modify the authority of the Federal Energy Regulatory Commission to conduct investigations, to increase the penalties for violations of the Federal Power Act and Natural Gas Act, to authorize the Chairman of the Federal Energy Regulatory Commission to contract for consultant services, and for other purposes.

S. 512

At the request of Mr. VOINOVICH, the names of the Senator from Hawaii (Mr. AKAKA) and the Senator from Georgia (Mr. MILLER) were added as cosponsors of S. 512, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts paid on behalf of Federal employees under Federal student loan repayment programs.

S. 518

At the request of Ms. COLLINS, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 518, a bill to increase the supply of pancreatic islet cells for research, to provide better coordination of Federal efforts and information on islet cell transplantation, and to collect the data necessary to move islet cell transplantation from an experimental procedure to a standard therapy.

S. 546

At the request of Mr. AKAKA, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 546, a bill to provide for the protection of paleontological resources on Federal lands, and for other purposes.

S. 558

At the request of Mr. MCCAIN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 558, a bill to elevate the position of the Director of the Indian Health Service within the Department of Health and Human Services to Assistant Secretary for Indian Health, and for other purposes.

S. 569

At the request of Mr. ENSIGN, the names of the Senator from Georgia (Mr. CHAMBLISS) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. 569, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S.J. RES. 6

At the request of Mr. LIEBERMAN, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S.J. Res. 6, a joint resolution expressing the sense of Congress with respect to planning the reconstruction of Iraq.

S.J. RES. 7

At the request of Ms. LANDRIEU, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S.J. Res. 7, a joint resolution proposing an amendment to the Constitution of the United States relative to the reference to God in the Pledge of Allegiance and on United States currency.

S. CON. RES. 8

At the request of Ms. COLLINS, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. Con. Res. 8, a concurrent resolution designating the second week in May each year as ''National Visiting Nurse Association Week.''

S. RES. 48

At the request of Mr. AKAKA, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. Res. 48, a resolution designating April 2003 as ''Financial Literacy for Youth Month.''

S. RES. 74

At the request of Mrs. FEINSTEIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. Res. 74, a resolution to amend rule XLII of the Standing Rules of the Senate to prohibit employment discrimination in the Senate based on sexual orientation.

S. RES. 78

At the request of Mr. SPECTER, the names of the Senator from Louisiana

(Ms. LANDRIEU), the Senator from Virginia (Mr. ALLEN) and the Senator from Florida (Mr. GRAHAM) were added as cosponsors of S. Res. 78, a resolution designating March 25, 2003, as ''Greek Independence Day: A National Day of Celebration of Greek and American Democracy.''

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LUGAR:

S. 580. A bill to authorize the extension of nondiscriminatory treatment (normal trad relations treatment) to the products of Russia; to the Committee on Finance.

Mr. LUGAR. Mr. President, I rise today to offer legislation to repeal the Jackson-Vanik amendment to Title IV of the 1974 Trade Act as it relates to Russia and to authorize the President to grant permanent normal trade relations to Russia.

Congress passed the 1974 Jackson-Vanik amendment to deny permanent normal trade relations to communist countries that restricted emigration rights. Over the years, it has been an effective tool to promote free emigration, but its continuing applicability to Russia no longer makes sense in the context of the many changes that have occurred since the fall of the Soviet Union.

Since 1994, successive Administrations have found Russia in full compliance with the requirements of freedom of emigration. Because Russia continues to be subject to Jackson-Vanik, the Administration must submit a semi-annual report to the Congress on Russia's continued compliance with freedom of emigration requirements. Since 1991, Congress has authorized the removal of Jackson-Vanik restrictions from Estonia, Latvia, Lithuania, the Czech Republic, the Slovak Republic, Hungary, Bulgaria, Romania, Kyrgyzstan, Albania, and Georgia. The conditions that have warranted these countries' removal from Title IV reporting apply equally to Russia.

For more than 8 years, Russia has satisfied the requirements of the Jackson-Vanik legislation. It has supported free emigration and it has signed a bilateral trade agreement with the United States allowing the application of normal trade relations status. Last year, the United States declared that Russia would no longer be considered a nonmarket economy for the purposes of trade remedies laws. Russia has made tremendous strides in the last decade. While Russia currently receives normal trade relations treatment with respect to its exports to the U.S., repealing Jackson-Vanik will remove the requirement of semi-annual reports that have been an irritant in U.S.-Russia relations. Granting permanent normal trade relations also will provide certainty that will improve the investment climate and promote enhanced economic relations between the U.S. and Russia. I urge my colleagues to support this legislation.

By Mr. BUNNING:

S. 582. A bill to authorize the Department of Energy to develop and implement an accelerated research and development program for advanced clean coal technologies for use in coal-based electricity generating facilities and to amend the Internal Revenue Code of 1986 to provide financial incentives to encourage the retrofitting, repowering, or replacement of coal-based electricity generating facilities to protect the environment and improve efficiency and encourage the early commercial application of advanced clean coal technologies, so as to allow coal to help meet the growing need of the United States for the generation of reliable and affordable electricity; to the Committee on Finance.

Mr. BUNNING. 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. 582

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

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''Coal Energy Research Development and Demonstration Act of 2003''.

SEC. 2. TABLE OF CONTENTS.

TITLE I—ACCELERATED TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM FOR ADVANCED CLEAN COAL TECHNOLOGY

SEC. 101. DEFINITIONS.

In this title:

(a) COST AND PERFORMANCE GOALS.—The term ''cost and performance goals'' means the cost and performance goals established under section 102.

(b) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

SEC. 102. COST AND PERFORMANCE GOALS.

(a) IN GENERAL.—The Secretary shall perform an assessment that identifies cost and performance goals of technologies that would permit the continued cost-competitive use of coal for electricity generation, as chemical feedstocks, and as transportation fuel in 2007, 2015 and the years after 2020.

(b) CONSULTATION.—In establishing the cost and performance goals, the Secretary shall—

(1) consider activities and studies undertaken to date by industry in cooperation with the Department of Energy in support of such assessment; and

(2) consult with interested entities, including coal producers, industries using coal, organizations to promote coal and advanced coal technologies, environmental organizations and organizations representing workers.

(c) TIMING.—The Secretary shall—

(1) Not later than 120 days after the date of enactment of this Act, issue a set of draft cost and performance goals for public comment; and

(2) not later than 180 days after the date of enactment of this Act, after taking into consideration any public comments received, submit to Congress the final cost and performance goals.

SEC. 103. STUDY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and once every 2 years thereafter through 2016, the Secretary, in cooperation with other appropriate federal agencies, shall conduct a study to—

(1) identify technologies that, by themselves or in combination with other technologies, may be capable of achieving the cost and performance goals;

(2) assess the costs that would be incurred by, and the period of time that would be required for, the development and demonstration of technologies that, by themselves or in combination with other technologies, contribute to the achievement of the cost and performance goals;

(3) develop recommendations for technology development programs, which the Department of Energy could carry out in cooperation with industry, to develop and demonstrate technologies that, by themselves or in combination with other technologies, achieves the cost and performance goals; and

(4) develop recommendations for additional authorities required to achieve the cost and performance goals, and review and recommend changes, if any, to those cost and performance goals if the Secretary determines that such changes are necessary as a result of ongoing research, development and demonstration of technologies.

(b) COOPERATION—In carrying out this section, the Secretary shall give due weight to the expert advice of representatives of the entities described in section 102(b)(2).

SEC. 104. TECHNOLOGY RESEARCH, DEVELOPMENT AND DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary shall carry out a technology research, development and demonstration program to facilitate production and generation of coal-based power through methods and equipment under—

(1) this Title;

(2) the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.);

(3) the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.); and

(4) title XVI of the Energy Policy Act of 1992 (42 U.S.C. 13381 et seq.).

(b) CONDITIONS.—The program described in subsection (a) shall be designed to achieve the cost and performance goals required by Section 102.

SEC. 105. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary $200,000,000 for fiscal year 2004, $210,000,000 for fiscal year 2005, and $220,500,000 for fiscal year 2006, to remain available until expended, for coal and related technologies research and development programs, which shall include—

(1) innovations for existing plants;

(2) integrated gasification combined cycle;

(3) advanced combustion systems;

(4) turbines for synthesis gas derived from coal;

(5) carbon capture and sequestration research and development;

(6) coal-derived transportation fuels and chemicals;

(7) solid fuels and feedstocks; and

(8) advanced coal-related research.

(b) LIMIT ON USE OF FUNDS.—

(1) Prior to the use of funds authorized by this section, the Secretary shall transmit to the Congress a report describing the proposed use of funds and containing a plan that includes—

(a) a detailed description of how proposals, if any, will be solicited and evaluated, including a list of all activities expected to be undertaken;

(b) a detailed list of technical milestones for each coal and related technology that will be pursued;

(c) a description of how the programs authorized in this section will be carried out so as to complement and not duplicate activities authorized under the Clean Coal Power Initiative authorized under Title II.

(2) Thirty days shall elapse from receipt of the report required by this subsection after which the Secretary may then use the authorization of appropriations provided by this section.

TITLE II—CLEAN COAL POWER INITIATIVE

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

(a) CLEAN COAL POWER INITIATIVE.—Except as provided in subsection (b), there are authorized to be appropriated to the Secretary to carry out the activities authorized by this title $200,000,000 for each of the fiscal years 2003 through 2011, to remain available until expended.

(b) LIMIT ON USE OF FUNDS.—

(1) Notwithstanding subsection (a), the Secretary is authorized to obligate the use of funds prior to the date authorized herein, subject to appropriations.

(2) The Secretary shall transmit to the Committee on Energy and Commerce and the Committee on Science of the House of Representatives, and to the Senate, a report, with respect to subsection (a), containing—

(A) a detailed assessment of whether the aggregate funding levels provided under subsection (a) are the appropriate funding levels for that program;

(B) a detailed description of how proposals will be solicited and evaluated, including a list of all activities expected to be undertaken;

(C) a detailed list of technical milestones for each coal and related technology that will be pursued; and

(D) a detailed description of how the program will avoid problems enumerated in General Accounting Office reports on the Clean Coal Technology Program, including problems that have resulted in unspent funds and projects that failed either financially or scientifically.

(3) Thirty days elapse from receipt of the report required by this subsection after which the Secretary may then use the authorization of appropriations provided by this section.

(c) APPLICABILITY.—Subsection (b) shall not apply to any project begun before September 30, 2003.

SEC. 202. CLEAN COAL POWER INITIATIVE CRITERIA.

(a) IN GENERAL.—The Secretary shall not provide funding under this title for any project that does not advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that are in operation or have been demonstrated as of the date of the enactment of this Act.

(b) TECHNICAL CRITERIA FOR CLEAN COAL POWER INITIATIVE.—

(1) GASIFICATION.—

(A) In allocating the funds made available under section 201(a), the Secretary shall ensure that not less than 55 percent, but not more than 80 percent, of the funds are used for coal-based gasification technologies, coal based projects that includes the separation and capture of carbon dioxide, or coal based projects that include gasification combined cycle, gasification fuel cells, gasification coproduction, or hybrid gasification/combustion.

(B) The Secretary shall set technical milestones specifying emissions levels that coal gasification projects must be designed to and reasonably expected to achieve. The milestones shall get more restrictive through the life of the program. The milestones shall be designed to achieve by 2020 coal gasification projects able—

(i) to remove 99 percent of sulfur dioxide;

(ii) to emit no more than .05 lbs of NO_x per million BTU;

(iii) to achieve substantial reductions in mercury emissions; and

(iv) to achieve a thermal efficiency of—

(I) 60 percent for coal of more than 9,000 Btu;

(II) 59 percent for coal of 7,000 to 9,000 Btu; and

(III) 57 percent for coal of less than 7,000 Btu.

(2) OTHER PROJECTS.—For projects not described in paragraph (1), the Secretary shall set technical milestones specifying emissions levels that the projects must be designed to and reasonably expected to achieve. The milestones shall get more restrictive through the life of the program. The milestones hall be designed to achieve by 2010 projects able—

(A) to remove 97 percent of sulfur dioxide;

(B) to emit no more than .08 lbs of NOx per million BTU;

(C) to achieve substantial reductions in mercury emissions; and

(D) to achieve a thermal efficiency of—

(i) 45 percent for coal of more than 9,000 Btu;

(ii) 44 percent for coal 7,000 to 9,000 Btu; and

(iii) 42 percent for coal of less than 7,000 Btu.

(3) CONSULTATION.—Before setting the technical milestones under paragraphs (1)(B) and (2), the Secretary shall consult with the Administrator of the Environmental Protection Agency and interested entities, including coal producers, industries using coal, organizations to promote coal or advanced coal technologies, environmental organizations, and organizations representing workers.

(4) EXISTING UNITS.—In the case of projects at existing units, in lieu of the thermal efficiency requirements set forth in paragraph (1)(B)(iv) and (2)(D), the projects shall be designed to achieve an overall thermal design efficiency improvement compared to the efficiency of the unit as operated, of not less than—

(A) 7 percent for coal of more than 9,000 Btu;

(B) 6 percent for coal of 7,000 to 9,000 Btu; or

(C) 4 percent for coal of less than 7,000 Btu.

(c) FINANCIAL CRITERIA.—The Secretary shall not provide a funding award under this title unless the recipient has documented to the satisfaction of the Secretary that—

(1) the award recipient is financially viable without the receipt of additional Federal funding;

(2) the recipient will provide sufficient information to the Secretary for the Secretary to ensure that the award funds are spent efficiently and effectively; and

(3) a market exists for the technology being demonstrated or applied, as evidenced by statements of interest in writing from potential purchasers of the technology.

(d) FINANCIAL ASSISTANCE.—The Secretary shall provide financial assistance to projects that meet the requirements of subsections (a), (b), and (c) and are likely to—

(1) achieve overall cost reductions in the utilization of coal to generate useful forms of energy;

(2) improve the competitiveness of coal among various forms of energy in order to maintain a diversity of fuel choices in the United States to meet electricity generation requirements; and

(3) demonstrate methods and equipment that are applicable to 25 percent of the electricity generating facilities that use coal as the primary feedstock as of the date of the enactment of this Act.

(e) FEDERAL SHARE.—The Federal share of the cost of a coal or related technology project funded by the Secretary shall not exceed 50 percent. The Federal share may repaid over a reasonable period of time as agreed upon with the Secretary.

(f) APPLICABILITY.—No technology, or level of emission reduction, shall be treated as adequately demonstrated for purposes of section 111 of the Clean Air Act, achievable for purposes of section 169 of that Act, or achievable in practice for purposes of section 171 of that Act solely by reason of the use of such technology, or the achievement of such emission reduction, by one or more facilities receiving assistance under this title.

SEC. 203. REPORT.

(a) Not later than 1 year after the date of the enactment of this Act, and once every 2 years thereafter through 2011, the Secretary, in consultation with other appropriate Federal agencies, shall transmit to the Committee on Energy and Commerce and the Committee on Science of the House of Representatives, and to the Senate, a report describing—

(1) the technical milestones set forth in section 202 and how those milestones ensure progress toward meeting the requirements of subsections (b)(1)(B) and (b)(2) of section 202; and

SEC. 204. CLEAN COAL CENTERS OF EXCELLENCE.

As part of the program authorized in section 201, the Secretary shall award competitive, merit-based grants to universities for the establishment of Centers of Excellence for Energy Systems of the Future. The Secretary shall provide grants to universities that can show the greatest potential for advancing new clean coal technologies.

TITLE III—CLEAN COAL INCENTIVES

Subtitle A—Credit for Emission Reductions and Efficiency Improvements in Existing Coal-Based Electricity Generation Facilities

SEC. 301. CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.

(a) CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.—Subpart D of part IV of subchapter A of chapter

1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 451. CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.

''(a) GENERAL RULE.—For purposes of section 38, the qualifying clean coal technology production credit of any taxpayer for any taxable year is equal to the product of—

''(1) the applicable amount of clean technology production credit, multiplied by

''(2) the applicable percentage of the kilowatt hours of electricity produced and the equivalent heat value of other fuels or chemicals produced by the taxpayer during such taxable year at a qualifying clean coal technology unit, but only if such production occurs during the 10-year period beginning on the date the unit was returned to service after becoming a qualifying clean coal technology unit.

''(b) APPLICABLE AMOUNT.—

''(1) IN GENERAL.—For purposes of this section, the applicable amount of clean coal technology production credit is equal to $0.0034 per kilowatt-hour of electricity produced and the equivalent heat value of other fuels or chemicals produced from not more than 300,000 kilowatts of nameplate capacity at the same qualifying clean coal technology unit.

''(2) INFLATION ADJUSTMENT.—For calendar years after 2003, the applicable amount of clean coal technology production credit shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the amount is applied. If any amount as increased under the preceding sentence is not a multiple of 0.01 cent, such amount shall be rounded to the nearest multiple of 0.01 cent.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, with respect to any qualifying clean coal technology unit, the applicable percentage is the percentage equal to the ratio which the portion of the national megawatt capacity limitation allocated to the taxpayer with respect to such unit under subsection (e) bears to the total megawatt capacity of such unit.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFYING CLEAN COAL TECHNOLOGY UNIT.—The term ''qualifying clean coal technology unit'' means a clean coal technology unit of the taxpayer which—

''(A) on the date of the enactment of this section was a coal-based electricity generating steam generator-turbine unit which was not a clean coal technology unit;

''(B) has a nameplate capacity rating of not more than 300,000 kilowatts as of the date of enactment of this section;

''(C) becomes a clean coal technology unit as the result of the retrofitting, repowering, or replacement of the unit with clean coal technology, which nameplate capacity may then be greater than 300,000 kilowatts, during the 10-year period beginning on the date of the enactment of this section;

''(D) is not receiving nor is scheduled to receive funding under the Clean Coal Technology Program, the Power Plant Improvement Initiative, or the Clean Coal Power Initiative administered by the Secretary of Energy; and

''(E) receives an allocation of a portion of the national megawatt capacity limitation under subsection (e), which shall not exceed 300,000 kilowatts.

''(2) CLEAN COAL TECHNOLOGY UNIT.—The term ''clean coal technology unit'' means a unit which—

''(A) uses clean coal technology, including advanced pulverized coal or atmosphere fluidized bed combustion, pressurized fluidized bed combustion, integrated gasification combined cycle, or any other technology for the production of electricity;

''(B) uses at least 75 percent coal to produce 50 percent or more of its thermal output as electricity;

''(C) has a design net heat rate of at least 500 less than that of such unit as described in paragraph (1)(A);

''(D) has a maximum design net heat rate of not more than 9,500; and

''(E) meets the pollution control requirements of paragraph (3).

''(3) POLLUTION CONTROL REQUIREMENTS.—

''(A) IN GENERAL.—A unit meets the requirements of this paragraph if—

''(i) its emissions of sulfur dioxide, nitrogen oxide, or particulates meet the lower of the emission levels for each such emission specified in—

''(I) subparagraph (B), or

''(II) the new source performance standards of the Clean Air Act (42 U.S.C. 7411) which are in effect for the category of source at the time of the retrofitting, repowering, or replacement of the unit, and

''(ii) its emissions do not exceed any relevant emission level specified by regulation pursuant to the hazardous air pollutant requirements of the Clean Air Act (42 U.S.C. 7412) is effect at the time of the retrofitting, repowering, or replacement.

''(B) SPECIFIC LEVELS.—The levels specified in this subparagraph are—

''(i) in the case of sulfur dioxide emissions, 50 percent of the sulfur dioxide emission levels specified in the new source performance standards of the Clean Air Act (42 U.S.C. 7411) in effect on the date of the enactment of this section for the category of source,

''(ii) in the case of nitrogen oxide emissions—

''(I) 0.1 pound per million Btu of heat input if the unit is not a cyclone-fired boiler, and

''(II) if the unit is a cyclone-fired boiler, 15 percent of the uncontrolled nitrogen oxide emissions from such boilers, and

''(ii) in the case of particulate emissions, 0.02 pound per million Btu of heat input.

''(4) DESIGN NET HEAT RATE.—The design net heat rate with respect to any unit, measured in Btu per kilowatt hour (HHV)—

''(A) shall be based on the design annual heat input to and the design annual net electrical power, fuels and chemicals output from such unit (determined without regard to such unit's co-generation of steam),

''(B) shall be adjusted for the heat content of the design coal to be used by the unit if it is less than 12,000 Btu per pound according to the following formula:

Design net heat rate = Unit net heat rate × [1–{((12,000-design coal heat content, Btu per pound)/1,000) × 0.013}],

''(C) shall be corrected for the site reference conditions of—

''(i) elevation above sea level of 500 feet,

''(ii) air pressure of 14.4 pounds per square inch absolute (psia),

''(iii) temperature, dry bulb of 63°F,

''(iv) temperature, wet bulb of 54°F, and

''(v) relative humidity of 55 percent, and

''(D) shall be adjusted (or credit given) for any qualifying unit that installs carbon capture controls that remove not less than 50 percent of the unit's carbon dioxide emissions up to the design heat rate level that would have resulted without installation of carbon capture controls.

''(5) HHV.—The term ''HHV'' means higher heating value.

''(6) APPLICATION OF CERTAIN RULES.—The rules of paragraphs (3), (4), and (5) of section 45(d) shall apply.

''(7) INFLATION ADJUSTMENT FACTOR.—

''(A) IN GENERAL.— The term ''inflation adjustment factor'' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2003.

''(B) GDP IMPLICIT PRICE DEFLATOR.—The term ''GDP implicit price deflator'' means the most recent revision of the implicit price deflator for the gross domestic product as computed by the Department of Commerce before March 15 of the calendar year.

''(8) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of this section, a unit which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualifying clean coal technology unit during such period.

''(e) NATIONAL LIMITATION ON THE AGGREGATE CAPABILITY OF QUALIFYING CLEAN COAL TECHNOLOGY UNITS.—

''(1) IN GENERAL.—For purposes of subsection (d)(1)(E), the national megawatt capacity limitation for qualifying clean coal technology units is 4,000 megawatts.

''(2) ALLOCATION OF LIMITATION.—The Secretary shall allocate the national megawatt capacity limitation for qualifying clean coal technology units in such manner as the Secretary may prescribe under the regulations under paragraph (3) provided, however, that such allocation shall not exceed 300,000 kilowatts per qualifying clean coal technology unit.

''(3) REGULATIONS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate—

''(A) to carry out the purposes of this subsection,

''(B) to limit the capacity of any qualifying clean coal technology unit to which this section applies so that the combined megawatt capacity allocated to all such units under this subsection when all such units are placed in service during the 10-year period described in subsection (d)(1)(C), does not exceed 4,000 megawatts,

''(C) to provide a certification process under which the Secretary, in consultation with the Secretary of Energy, shall approve and allocate the national megawatt capacity limitation—

''(i) to encourage the units with the highest thermal efficiencies, when adjusted for the heat content of the design coal and site reference conditions described in subsection (d)(4)(C), and superior environmental performance compared to other proposals, be placed in service as soon as possible,

''(ii) to allocate capacity to taxpayers that have a definite and credible plan for placing into commercial operation a qualifying clean coal technology unit, including—

''(I) a site,

''(II) contractual commitments for procurement and construction or, in the case of regulated utilities, the agreement of the State utility commission,

''(III) filings for all necessary preconstruction approvals,

''(IV) a demonstrated record of having successfully completed comparable projects on a timely basis, and

''(V) such other factors that the Secretary determines are appropriate,

''(D) to allocate the national megawatt capacity limitation to a portion of the capacity of a qualifying clean coal technology unit if the Secretary determines that such an allocation would maximize the amount of efficient production encouraged with the available tax credits,

''(E) to set progress requirements and conditional approvals so that capacity allocations for clean coal technology units that become unlikely to meet the necessary conditions for qualifying can be reallocated by the

Secretary to other clean coal technology units, and

''(F) to provide taxpayers with opportunities to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) of the Internal Revenue Code of 1986, as amended by this Act, is amended by striking ''plus'' at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting '', plus'', and by adding at the end the following new paragraph:

''(20) the qualifying clean coal technology production credit determined under section 45I(a).''.

(c) TRANSITIONAL RULE.—Section 39(d) of the Internal Revenue Code of 1986 (relating to transitional rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(16) NO CARRYBACK OF SECTION 45I CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualifying clean coal technology production credit determined under section 45I may be carried back to a taxable year ending on or before the date of the enactment of section 45I.''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45I. Credit for production from a qualifying clean coal technology unit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to production after the date of the enactment of this act, in taxable years ending after such date.

Subtitle B—Incentives for Early Commercial Applications of Advanced Clean Coal Technologies

SEC. 302. CREDIT FOR INVESTMENT IN QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY.

(a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.—Section 46 of the Internal Revenue Code of 1986 (relating to amount of credit) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following new paragraph:

''(4) the qualifying advanced clean coal technology unit credit.''.

(b) AMOUNT OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.—Subpart E of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to rules for computing investment credit) is amended by inserting after section 48 the following new section:

''SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.

''(a) IN GENERAL.—For purposes of section 46, the qualifying advanced clean coal technology unit credit for any taxable year is an amount equal to 10 percent of the applicable percentage of the qualified investment in a qualifying advanced clean coal technology unit for such taxable year.

''(b) QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the term ''q1ualifying advanced clean coal technology unit'' means an advanced clean coal technology unit of the taxpayer—

''(A)(i)(I) in the case of a unit first placed in service after the date of the enactment of this section, the original use of which commences with the taxpayer, or

''(II) in the case of the retrofitting or repowering of a unit first placed in service before such date of enactment, the retrofitting or repowering of which is completed by the taxpayer after such date, or

''(ii) which is acquired through purchase (as defined by section 179(d)(2)),

''(B) which is depreciable under section 167,

''(C) which has a useful life of not less than 4 years,

''(D) which is located in the United States,

''(E) which is not receiving nor is scheduled to receive funding under the Clean Coal Technology Program, the Power Plant Improvement Initiative, or the Clean Coal Power Initiative administered by the Secretary of Energy,

''(F) which is not a qualifying clean coal technology unit, and

''(G) which receives an allocation of a portion of the national megawatt capacity limitation under subsection (f).

''(2) SPECIAL RULE FOR SALE-LEASEBACKS.—For purposes of subparagraph (A) of paragraph (1), in the case of a unit which—

''(A) is originally placed in service by a person, and

''(B) is sold and leased back by such person, or is leased to such person, within 3 months after the date such unit was originally placed in service, for a period of not less than 12 years, such unit shall be treated as originally placed in service not earlier than the date on which such unit is used under the leaseback (or lease) referred to in subparagraph (B). The preceding sentence shall not apply to any property if the lessee and lessor of such property make an election under this sentence. Such as election, once made, may be revoked only with the consent of the Secretary.

''(3) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of this subsection, a unit which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualifying advanced clean coal technology unit during such period.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, with respect to any qualifying advanced clean coal technology unit, the applicable percentage is the percentage equal to the ratio which the portion of the national megawatt capacity limitation allocated to the taxpayer with respect to such unit under subsection (f) bears to the total megawatt capacity of such unit.

''(d) ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For purposes of this section—

''(1) IN GENERAL.—The term ''advanced clean coal technology unit'' means a new, retrofit, or repowering unit of the taxpayer which—

''(A) is—

''(i) an eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit,

''(ii) an eligible pressurized fluidized bed combustion technology unit,

''(iii) an eligible integrated gasification combined cycle technology unit, or

''(iv) an eligible other technology unit, and

''(B) meets the carbon emission rate requirements of paragraph (6).

''(2) ELIGIBLE ADVANCED PULVERIZED COAL OR ATMOSPHERIC FLUIDIZED BED COMBUSTION TECHNOLOGY UNIT.—The term ''eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit'' means a clean coal technology unit using advanced pulverized coal or atmospheric fluidized bed combustion technology which—

''(A) is placed in service after the date of the enactment of this section and before January 1, 2015, and

''(B) has a design net heat of not more than 8,500 (8,900 in the case of units placed in service before 2011).

''(3) ELIGIBLE PRESSURIZED FLUIDIZED BED COMBUSTION TECHNOLOGY UNIT.—The term ''eligible pressurized fluidized bed combustion technology unit'' means a clean coal technology unit using pressurized fluidized bed combustion technology which—

''(A) is placed in service after the date of the enactment of this section and before January 1, 2019, and

''(B) has a design net heat of not more than 7,720 (8,900 in the case of units placed in service before 2011, and 8,500 in the case of units placed in service after 2010 and before 2015).

''(4) ELIGIBLE INTEGRATED GASIFICATION COMBINED CYCLE TECHNOLOGY UNIT.—The term ''eligible integrated gasification combined cycle technology unit'' means a clean coal technology unit using integrated gasification combined cycle technology, with or without fuel or chemical co-production, which—

''(A) is placed in service after the date of the enactment of this section and before January 1, 2019.

''(B) has a design net heat rate of not more than 7,720 (8,900 in the case of units placed in service before 2011, and 8,500 in the case of units placed in service after 2010 and before 2015) and

''(C) has a net thermal efficiency (HHV) using coal with fuel or chemical co-production of not less than 44.2 percent (38.4 percent in the case of units placed in service before 2011, and 40.2 percent in the case of units placed in service after 2010 and before 2015).

''(5) ELIGIBLE OTHER TECHNOLOGY UNIT.—The term ''eligible other technology unit'' means a clean coal technology unit using any other technology for the production of electricity which is placed in service after the date of the enactment of this section and before January 1, 2019.

''(6) CARBON EMISSION RATE REQUIREMENTS—

''A) IN GENERAL—Except as provided in subparagraph (B), a unit meets the requirements of this paragraph if—

''(i) in the case of a unit design coal with a heat content of not more than 9,000 Btu per pound, the carbon emission rate is less than 0.60 pound of carbon per kilowatt hour, and

''(ii) in the case of a unit design coal with a heat content of more than 9,000 Btu per pound, the carbon emission rate is less than 0.54 pound of carbon per kilowatt hour.

''(B) ELIGIBLE OTHER TECHNOLOGY UNIT.—In the case of an eligible other technology unit, subparagraph (A) shall be applied by substituting ''0.51'' and ''0.459'' for ''0.60'' and ''0.54'', respectively.

''(e) GENERAL DEFINITIONS.—Any term used in this section which is also used in section 45I shall have the meaning given such term in section 45I.

''(f) NATIONAL LIMITATION ON THE AGGREGATE CAPACITY OF ADVANCED CLEAN COAL TECHNOLOGY UNITS—

''(1) IN GENERAL.—For purposes of subsection (b)(1)(G), the national megawatt capacity limitation is—

''(A) for qualifying advanced clean coal technology units using advanced pulverized coal or atmospheric fluidized bed combustion technology, not more than 1,000 megawatts (not more than 500 megawatts in the case of units placed in service before 2011),

''(B) for such units using pressurized fluidized bed combustion technology, not more than 500 megawatts (not more than 250 megawatts in the case of units placed in service before 2011),

''(C) for such units using integrated gasification combined cycle technology, with or without fuel or chemical co-production, not more than 2,000 megawatts (not more than 750 megawatts, or not more than one project with a design net heat rate greater than 8900 Btu per kilowatt hour, whichever is less, in the case of units placed in service before 2011), and

''(D) for such units using other technology for the production of electricity, not more than 500 megawatts (not more than 250 megawatts in the case of units placed in service before 2011).

''(2) ALLOCATION OF LIMITATION.—The Secretary shall allocate the national megawatt capacity limitation for qualifying advanced clean coal technology units in such manner as the Secretary may prescribe under the regulations under paragraph (3).

''(3) Regulations.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate—

''(A) to carry out the purposes of this subsection and section 45J,

''(B) to limit the capacity of any qualifying advanced clean coal technology unit to which this section applies so that the combined megawatt capacity of all such units to which this section applies does not exceed 4,000 megawatts.

''(C) to provide a certification process described in section 45I(e)(3)(C)(i)–(ii),

''(D) to carry out the purposes described in subparagraphs (D), (E), and (F) of section 45I(e)(3), and

''(E) to reallocate capacity which is not allocated to any technology described in subparagraphs (A) through (D) of paragraph (1) because an insufficient number of qualifying units request an allocation for such technology, to another technology described in such subparagraphs in order to maximize the amount of energy efficient production encouraged with the available tax credits.

''(4) SELECTION CRITERIA.—For purposes of paragraph (3)(C), the selection criteria for allocating the national megawatt capacity limitation to qualifying advanced clean coal technology units—

''(A) shall be established by the Secretary of Energy as part of a competitive solicitation,

''(B) shall include primary criteria of minimum design net heat rate, maximum design thermal efficiency, environmental performance, and lowest cost to the Government,

''(C) shall include criteria for the selection of a unit(s) that achieves a thermal efficiency of lower than 8,900 Btu per kilowatt hour in that instance where two or more projects are otherwise eligible for the credit provided by this section, and have applied to the Secretary for selection at or near the same period in time, and

''(D) shall include supplemental criteria as determined appropriate by the Secretary of Energy.

''(g) QUALIFIED INVESTMENT.—For purposes of subsection (a), the term ''qualified investment'' means, with respect to any taxable year, the basis of a qualifying advanced clean coal technology unit placed in service by the taxpayer during such taxable year (in the case of a unit described in subsection (b)(1)(A)(i)(II), only that portion of the basis of such unit which is properly attributable to the retrofitting or repowering of such unit).

''(h) QUALIFIED PROGRESS EXPENDITURES—

''(1) INCREASE IN QUALIFIED INVESTMENT.—In the case of a taxpayer who has made an election under paragraph (5), the amount of the qualified investment of such taxpayer for the taxable year (determined under subsection (g) without regard to this subsection) shall be increased by an amount equal to the aggregate of each qualified progress expenditure for the taxable year with respect to progress expenditure property.

''(2) PROGRESS EXPENDITURE PROPERTY DEFINED.—For purposes of this subsection, the term ''progress expenditure property'' means any property being constructed by or for the taxpayer and which it is reasonable to believe will qualify as a qualifying advanced clean coal technology unit which is being constructed by or for the taxpayer when it is placed in service.

''(3) QUALIFIED PROGRESS EXPENDITURES DEFINED.—For purposes of this subsection—

''(A) SELF-CONSTRUCTED PROPERTY.—In the case of any self-constructed property, the term ''qualified progress expenditures'' means the amount which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such property.

''(B) NONSELF-CONSTRUCTED PROPERTY.—In the case of nonself-constructed property, the term ''qualified progress expenditures'' means the amount paid during the taxable year to another person for the construction of such property.

''(4) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) SELF-CONSTRUCTED PROPERTY.—The term ''self-constructed property'' means property for which it is reasonable to believe that more than half of the construction expenditures will be made directly by the taxpayer.

''(B) NONSELF-CONSTRUCTED PROPERTY.—The term ''nonself-constructed property'' means property which is not self-constructed property.

''(C) CONSTRUCTION, ETC.—The term ''construction'' includes reconstruction and erection, and the term ''constructed'' includes reconstructed and erected.

''(D) ONLY CONSTRUCTION OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT TO BE TAKEN INTO ACCOUNT.—Construction shall be taken into account only if, for purposes of this subpart, expenditures therefor are properly chargeable to capital account with respect to the property.

''(5) ELECTION.—An election under this subsection may be made at such time and in such manner as the Secretary may by regulations prescribe. Such an election shall apply to the taxable year for which made and to all subsequent taxable years. Such an election, once made, may not be revoked except with the consent of the Secretary.

''(i) COORDINATION WITH OTHER CREDITS.—This section shall not apply to any property with respect to which the rehabilitation credit under section 47 or the energy credit under section 48 is allowed unless the taxpayer elects to waive the application of such credit to such property.''.

(c) RECAPTURE.—Section 50(a) of the Internal Revenue Code of 1986 (relating to other special rules) is amended by adding at the end the following new paragraph:

''(6) SPECIAL RULES RELATING TO QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For purposes of applying this subsection in the case of any credit allowable by reason of section 48A, the following shall apply:

''(A) GENERAL RULE.—In lieu of the amount of the increase in tax under paragraph (1), the increase in tax shall be an amount equal to the investment tax credit allowed under section 38 for all prior taxable years with respect to a qualifying advanced clean coal technology unit (as defined by section 48A(b)(1)) multiplied by a fraction whose numerator is the number of years remaining to fully depreciate under this title the qualifying advanced clean coal technology unit disposed of, and whose denominator is the total number of years over which such unit would otherwise have been subject to depreciation. For purposes of the preceding sentence, the year of disposition of the qualifying advanced clean coal technology unit shall be treated as a year of remaining depreciation.

''(B) PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.—Rules similar to the rules of paragraph (2) shall apply in the case of qualified progress expenditures for a qualifying advanced clean coal technology unit under section 48A, except that the amount of the increase in tax under subparagraph (A) of this paragraph shall be substituted for the amount described in such paragraph (2).

''(C) APPLICATION OF PARAGRAPH.—This paragraph shall be applied separately with respect to the credit allowed under section 38 regarding a qualifying advanced clean coal technology unit.''.

(d) TRANSITIONAL RULE.—Section 39(d) of the Internal Revenue Code of 1986 (relating to transitional rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(17) NO CARRYBACK OF SECTION 48A CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualifying advanced clean coal technology unit credit determined under section 48A may be carried back to a taxable year ending on or before the date of the enactment of section 48A.''.

(e) TECHNICAL AMENDMENTS—

(1) Section 49(a)(1)(C) of the Internal Revenue Code of 1986 is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) the portion of the basis of any qualifying advanced clean coal technology unit attributable to any qualified investment (as defined by section 48A(g)).''.

(2) Section 50(a)(4) of the Internal Revenue Code of 1986 is amended by striking ''and (2)'' and inserting ''(2), and (6)''.

(3) Section 50(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(6) NONAPPLICATION.—Paragraphs (1) and (2) shall not apply to any qualifying advanced clean coal technology unit credit under section 48A.''.

(4) The table of sections for subpart E of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 48 the following new item:

''Sec. 48A. Qualifying advanced clean coal technology unit credit.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after the date of the enactment of this Act, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 2212. CREDIT FOR PRODUCTION FROM A QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45J. CREDIT FOR PRODUCTION FROM A QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.

''(a) GENERAL RULE.—For purposes of section 38, the qualifying advanced clean coal technology production credit of any taxpayer for any taxable year is equal to—

''(1) the applicable amount of advanced clean coal technology production credit, multiplied by

''(2) the applicable percentage (as determined under section 48A(c)) of the sum of—

''(A) the kilowatt hours of electricity, plus

''(B) each 3,413 Btu of fuels or chemicals,

produced by the taxpayer during such taxable year at a qualifying advanced clean coal technology unit during the 10-year period beginning on the date the unit was originally

placed in service (or returned to service after becoming a qualifying advanced clean coal technology unit).

''(b) APPLICABLE AMOUNT.—For purposes of this section, the applicable amount of advanced clean coal technology production credit with respect to production from a qualifying advanced clean coal technology unit shall be determined as follows:

''(1) Where the qualifying advanced clean coal technology unit is producing electricity only:

''(A) In the case of a unit originally placed in service before 2011, if—

''The design net heat rate is:	The applicable amount is: For 1st 5 years of such service	For 2d 5 years of such service
Not more than 8,500	$.0060	$.0038
More than 8,500 but not more than 8,750	$.0025	$.0010
More than 8,750 but less than 8,900	$.0010	$.0010.

''(B) In the case of a unit originally placed in service after 2010 and before 2015, if—

''The design net heat rate is:	The applicable amount is: For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,770	$.0105	$.0090
More than 7,770 but not more than 8,125	$.0085	$.0068
More than 8,125 but less than 8,350	$.0075	$.0055.

''(C) In the case of a unit originally placed in service after 2014 and before 2019, if—

''The design net heat rate is:	The applicable amount is: For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,380	$.0140	$.0115
More than 7,380 but not more than 7,720	$.0120	$.0090.

''(2) Where the qualifying advanced clean coal technology unit is producing fuel or chemicals:

''(A) In the case of a unit originally placed in service before 2011, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is: For 1st 5 years of such service	For 2d 5 years of such service
Not less than 40.6 percent	$.0060	$.0038
Less than 40.6 but not less than 40 percent	$.0025	$.0010
Less than 40 but not less than 38.4 percent	$.0010	$.0010.

''(B) In the case of a nit originally placed in service after 2010 and before 2015, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is: For the 1st 5 years of such service	For 2d 5 years of such service
Not less than 43.6 percent	$.0105	$.0090
Less than 43.6 but not less than 42 percent	$.0085	$.0068
Less than 42 but not less than 40.2 percent	$.0075	$.0055.

''(C) In the case of a unit originally placed in service after 2014 and before 2019, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is: For 1st 5 years of such service	For 2d 5 years of such service
Not less than 44.2 percent	$.0140	$.0115
Less than 44.2 but not less than 43.9 percent	$.0120	$.0090.

''(c) A qualifying clean coal technology facility originally placed in service before 2009 that has a design heat rate that meets a lower heat rate test in paragraphs (1)(A)(B) and (C) and (2) (A)(B) and (C) above or a qualifying clean coal technology facility originally placed in service before 2013 that has a design heat rate that meets a lower heat rate test in paragraphs (1)(C), or (2)(C) above shall receive the highest applicable amount with respect to a production tax credit for which it qualifies.

''(d) INFLATION ADJUSTMENT.—For calendar years after 2003, each amount in paragraphs (1) and (2) of subsection (b) shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the amount is applied. If any amount as increased under the preceding sentence is not a multiple of 0.01 cent, such amount shall be rounded to the nearest multiple of 0.01 cent.

''(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) IN GENERAL.—Any term used in this section which is also used in section 451 or 48A of the Internal Revenue Code of 1986 shall have the meaning given such term in such section.

''(2) APPLICABLE RULES.—The rules of paragraphs (3), (4), and (5) of section 45(d) of the Internal Revenue Code of 1986 shall apply.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) of the Internal Revenue Code of 1986, as amended by this Act, is amended by striking ''plus'' at the end of paragraph (19), by striking the period at the end of paragraph (2) and inserting '', plus'', and by adding at the end the following new paragraph:

''(21) the qualifying advanced clean coal technology production credit determined under section 45J(a).''.

(c) TRANSITIONAL RULE.—Section 39(d) of the Internal Revenue Code of 1986 (relating to transitional rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(18) NO CARRYBACK OF SECTION 45J CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualifying advanced clean coal technology production credit determined under section 45J may be carried back to a taxable year ending on or before the date of the enactment of section 45J.''.

(d) DENIAL OF DOUBLE BENEFIT.—Section 29(d) of the Internal Revenue Code of 1986 (relating to other definitions and special rules) is amended by adding at the end the following paragraph:

''(9) DENIAL OF DOUBLE BENEFIT.—This section shall not apply with respect to any qualified fuel the production of which may be taken into account for purposes of determining the credit under section 45J.''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986, as amended by this Act, is amended by adding at the end the following new item.

''Sec. 45J. Credit for production from a qualifying advanced clean coal technology unit.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to production after the date of the enactment of this Act, in taxable years ending after such date.

Subtitle C—Treatment of Persons Not Able To Use Entire Credit

SEC. 2221. TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.

(a) IN GENERAL.—Section 45I of the Internal Revenue Code of 1986, as added by this Act, is amended by adding at the end the following new subsection:

''(f) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT—

''(1) ALLOWANCE OF CREDITS—

''(A) IN GENERAL.—Any credit allowable under this section, section 45J, or section 48A with respect to a facility owned by a person described in subparagraph (B) may be transferred or used as provided in this subsection, and the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

''(B) PERSONS DESCRIBED.—A person is described in this subparagraph if the person is—

''(i) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(ii) an organization described in section 1381(a)(2)(C),

''(iii) a public utility (as defined in section 136(c)(2)(B)),

''(iv) any State or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any of the foregoing,

''(v) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof, or ''(vi) the Tennessee Valley Authority.

''(2) TRANSFER OF CREDIT—

''(A) IN GENERAL.—A person described in clause (i), (ii), (iii), (iv), or (v) of paragraph (1)(B) may transfer any credit to which paragraph (1)(A) applies through an assignment to any other person not described in paragraph (1)(B). Such transfer may be revoked only with the consent of the Secretary.

''(B) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to insure that any credit described in subparagraph (A) is claimed once and not reassigned by such other person.

''(C) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in clause (iii), (iv), or (v) of paragraph (1)(B) from the transfer of any credit under subparagraph (A) shall be treated as arising from the exercise of an essential government function.

''(3) USE BY TVA.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of a person described in paragraph (1)(B)(vi), any credit to which paragraph (1)(A) applies may be applied as a credit against the payments required to be made in any fiscal year under section 15d(e) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4(e)) as an annual return on the appropriations investment and an annual repayment sum.

''(B) TREATMENT OF CREDITS.—The aggregate amount of credits described in paragraph (1)(A) with respect to such person shall be treated in the same manner and to the same extent as if such credits were a payment in cash and shall be applied first against the annual return on the appropriations investment.

''(C) CREDIT CARRYOVER.—With respect to any fiscal year, if the aggregate amount of credits described in paragraph (1)(A) with respect to such person exceeds the aggregate amount of payment obligations described in subparagraph (A), the excess amount shall remain available for application as credits against the amounts of such payment obligations in succeeding fiscal years in the same manner as described in this paragraph.

''(5) CREDIT NOT INCOME.—Any transfer under paragraph (2) or use under paragraph (3) of any credit to which paragraph (1)(A) applies shall not be treated as income for purposes of section 501(c)(12).

''(6) TREATMENT OF UNRELATED PERSONS.—For purposes of this subsection, sales among and between persons described in clauses (i),

(ii), (iii), and (v) of paragraph (1)(A) shall be treated as sales between unrelated parties.''.

''(b) EFFECTIVE DATE.—The amendment made by this section shall apply to production after the date of the enactment of this Act, in taxable years ending after such date.

By Mrs. HUTCHISON:

S. 583. A bill to require the provision of information to parents and adults concerning bacterial meningitis and the availability of a vaccination with respect to such disease; to the Committee on Health Education, Labor, and Pensions.

Mrs. HUTCHISON. Mr. President, I am pleased to be joined by Senators VOINOVICH, DEWINE, MIKULSKI and WARNER to offer health legislation that will bring great benefits to many of our Nation's families.

Bacterial meningitis affects 3,000 people across the United States each year. Approximately 10 percent of patients with bacterial meningitis die despite receiving antibiotics early in the course of the disease. Meningitis occurs most frequently in infants and young adults living in dormitory settings. The disease can result in permanent brain damage, hearing loss, learning disability, limb amputation, kidney failure or death.

In 2001, Lydia Evans entered her sophomore year at North Texas University as a healthy 20-year-old. Now she's lost both of her legs, parts of seven fingers and endured 15 surgeries and intensive physical therapy. She is a victim of a terrible, yet little-known disease called meningococcal meningitis.

Carolyn Waghorne of Dallas contacted me after the tragic death of her son, Carter, who contracted meningitis at boarding school in 1998. Mrs. Waghorne has led the battle in our State to create awareness about the dangers of the illness. After hearing her story, I knew we needed to help educate all Americans about this devastating—yet preventable—disease.

My bill would require the Secretary of Health and Human Services, in consultation with the Director of the Centers of Disease Control, CDC, to develop and make information available about bacterial meningitis. In addition, it would provide information about the availability and effectiveness of bacterial meningitis vaccinations for children and adults.

The information would be distributed at institutions, including child care centers, schools, universities, boarding schools, summer camps, detention facilities, and other entities that provide housing in a dorm-like setting.

Meningitis is spread through close contact such as coughing or sneezing and direct contact with persons infected with meningitis. The bacteria cannot live outside the body for very long, so the disease is not as easily transmitted as a cold virus. Many healthy people carry the bacteria, but if a person has a suppressed immune system they may contract the disease. A spinal tap procedure enables doctors to diagnose meningitis, and if the disease is discovered, it is treated with antibiotics.

The disease can result in permanent brain damage, hearing loss, learning disability, limb amputation, kidney failure or death.

The CDC reports that two-thirds of cases on college campuses could have been prevented with a vaccine. In fact, the Advisory Commission on Immunization Practices, part of the CDC, recommends what this bill provides.

I commend the Senators for their support and hope other Senators will join us in this effort to prevent the tragedies that befell Lydia Evans and Carolyn Waghorne as well as thousands of families every year.

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. 583

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 ''Meningitis Immunization Awareness Act''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Approximately 3,000 cases of meningococcal disease occur each year in the United States. Approximately 10 to 13 percent of patients with such disease die despite receiving antibiotics early in the disease. Of those individuals who survive, an additional 10 percent have severe after-effects of the disease, including mental retardation, hearing loss, and loss of limbs.

(2) There is a vaccine that protects individuals against some types of bacterium Neisseria meningitidis (also known as meningococcus), an important cause of bacterial meningitis and sepsis in children and young adults. A single dose of the vaccine is recommended, and vaccination will decrease the risk of the disease caused by Neisseria meningitidis.

(3) Currently, the only group of individuals that is vaccinated against bacterial meningitis is the members of the armed forces. The only other group of individuals that have been encouraged to get the vaccine are those individuals attending college.

SEC. 3. PROVISION OF INFORMATION.

(a) DEVELOPMENT OF INFORMATION.—The Secretary of Health and Human Services, in consultation with the Director of the Centers for Disease Control and Prevention, shall develop and make available to entities described in subsection (b) information concerning bacterial meningitis and the availability and effectiveness of vaccinations for individuals 2 years of age or older with respect to such disease.

(b) ENTITIES.—An entity is described in this subsection if the entity—

(1) is—

(A) a child care center or provider that is licensed or certified under an appropriate State law;

(B) an elementary or secondary school (as such terms are defined in the Elementary and Secondary School Act of 1965 (20 U.S.C. 6301 et seq.);

(C) a college or university;

(D) a boarding school or summer camp;

(E) a prison or other detention facility; or

(F) any other entity that provides for the housing of individuals in a dorm-like setting; and

(2) any other entity determined appropriate by the Secretary of Health and Human Services.

By Ms. LANDRIEU:

S. 584. A bill to direct the Consumer Product Safety Commission to promulgate a rule that requires manufacturers of certain consumer products to establish and maintain a system for providing notification of recalls of such products to consumers who first purchase such a product; to the Committee on Commerce, Science, and Transportation.

Ms. LANDRIEU. Mr. President, today I am happy to join my colleagues in the House of Representatives, Congressman MORAN and Congressman MCGOVERN, in re-introducing the Product Safety Notification and Recall Effectiveness Act. As my colleagues may recall, this legislation makes it easier for parents to learn when a product they bought may harm their children, so that they might take steps to return the item or have it repaired.

On January 6 of this year, the National Highway Traffic Safety Administration released a study that contained a lot of good news for parents. In its study, NHTSA found that its child safety seat registration program has been incredibly successful. NHTSA implemented this program in March of 1993, and the information that is starting to come in shows that nine times more child safety seats are now registered than before the program was launched. In fact, in 1993 only 3 percent of seats were registered; now 27 percent are. And this is significant, because this has directly led to more effective recalls of defective child seats—the recall repair rate has increased by more than half since 1993, from 13.8 percent to 21.5 percent.

The reason I mention this study to my colleagues is because NHTSA's program is very much like the one that this bill would establish. This legislation would require the Consumer Product Safety Commission to issue a rule requiring manufacturers to establish and maintain a system for notifying consumers of the recall of certain products that may cause harm to children. The database could be assembled through the use of shortened product registration cards, Internet registration, or other alternate means of encouraging consumers to provide vital contact information.

There is a very clear reason why such a database is necessary. As we all know, these products come with registration cards. The intent of these cards should be that customers will fill them out and send them in, which gives the companies a way to contact purchasers. Unfortunately, many times consumers do not return these cards, and there is a good reason behind this. These cards sometimes contain 40 to 50, or even more, different questions or boxes to fill out. They ask about marital status, salary information, and about what kind of products a person buys. Either a person does not wish to

reveal that much personal information, or they simply do not have time to fill out the card. In fact, the intent seems to be more to get personal marketing information from consumers than anything else. That is why its such a good idea to shorten the card and just ask for the basic information, like a customer's name, address, phone number, and e-mail address. Not only have studies done by companies like Mattel and BrandStamp shown that these methods increase the number of consumers who respond, NHTSA—working on almost ten years of real data—has clearly proven a dramatic increase in registration and, as a result, in the number of products successfully recalled.

But a card is not the only way to compile this information. For instance, many companies are now using online registration, where customers can log on to their website and quickly enter the information. For Americans with Internet connections, this is often much less of a hassle than filling out a card, attaching a stamp, and mailing it in. It's quick and easy. And this legislation allows for the use of alternate methods such as this in compiling this database.

I am sure that some of my colleagues might be concerned about the cost of setting up such a program. I say to my colleagues that I also have no desire to pass along more costs to the companies that make these products and, ultimately, to the consumer. However, let me again point to the NHTSA study. The indirect cost of consumers for the car seat program is 43 cents per seat sold. Forty-three cents. I do not know of a single parent who would not pay an extra forty-three cents to ensure the safety of their child. But I would say to my colleagues, don't take my word for it—ask the thousands of parents who have returned recalled car seats since 1993. I'm sure they would tell you that was the best 43 cents they had ever spent.

The need for this legislation is only highlighted by the CPSC's refusal to consider such a rule last Friday, despite intense efforts by consumer groups like the Consumer Federation of America and SAFE to highlight the importance of this change to the way recalls work. I world urge my colleagues to join me in sponsoring this important bill, and I hope that we can pass this legislation into law as soon as possible.

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. 584

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 ''Product Safety Notification and Recall Effectiveness Act of 2003''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The Consumer Product Safety Commission conducts approximately 300 recalls of hazardous, dangerous, and defective consumer products each year.

(2) In developing comprehensive corrective action plans with recalling companies, the Consumer Product Safety Commission staff greatly relies upon the media and retailers to alert consumers to the dangers of unsafe consumer products, because the manufacturers do not generally possess contact information regarding the purchasing consumers. Based upon information received from companies maintaining customer registration lists, such contact information is known for generally less than 7 percent of the total consumer products produced and distributed.

(3) The Consumer Product Safety Commission staff has found that most consumers do not return purchaser identification cards because of requests for marketing and personal information on the cards, and the likelihood of receiving unsolicited marketing materials.

(4) The Consumer Product Safety Commission staff has conducted research demonstrating that direct consumer contact is one of the most effective ways of motivating consumer response to a consumer product recall.

(5) Companies that maintain consumer product purchase data, such as product registration cards, warranty cards, and rebate cards, are able to effectively notify consumers of a consumer product recall.

(6) The Consumer Product Safety Commission staff has found that a consumer product safety owner card, without marketing questions or requests for personal information, that accompanied products such as small household appliances and juvenile products would increase consumer participation and information necessary for direct notification in consumer product recalls.

(7) The National Highway Traffic Safety Administration has, since March 1993, required similar simplified, marketing-free product registration cards on child safety seats used in motor vehicles. The National Highway Traffic Safety Administration has found this requirement has increased recall compliance rates.

(b) PURPOSE.—The purpose of this Act is to reduce the number of deaths and injuries from defective and hazardous consumer products through improved recall effectiveness, by—

(1) requiring the Consumer Product Safety Commission to promulgate a rule to require manufacturers of juvenile products, small household appliances, and certain other consumer products, to include a simplified product safety owner card with those consumer products at the time of original purchase by consumers, or develop effective electronic registration of the first purchasers of such products, to develop a customer database for the purpose of notifying consumers about recalls of those products; and

(2) encouraging manufacturers, private labelers, retailers, and others to use creativity and innovation to create and maintain effective methods of notifying consumers in the event of a consumer product recall.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) TERMS DEFINED IN CONSUMER PRODUCT SAFETY ACT.—The definitions set forth in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) shall apply to this Act.

(2) COVERED CONSUMER PRODUCT.—The term ''covered consumer product'' means—

(A) a juvenile product;

(B) a small household appliance; and

(C) such other consumer product as the Commission considers appropriate for achieving the purpose of this Act.

(3) JUVENILE PRODUCT.—The term ''juvenile product''—

(A) means a consumer product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years; and

(B) includes, among other items—

(i) full-size cribs and nonfull-size cribs;

(ii) toddler beds;

(iii) high chairs, booster chairs, and hook-on chairs;

(iv) bath seats;

(v) gates and other enclosures for confining a child;

(vi) playpens;

(vii) stationary activity centers;

(viii) strollers;

(ix) walkers;

(x) swings;

(xi) child carriers;

(xii) bassinets and cradles; and

(xiii) children's toys.

(4) PRODUCT SAFETY OWNER CARD.—The term ''product safety owner card'' means a standardized product identification card supplied with a consumer product by the manufacturer of the product, at the time of original purchase by the first purchaser of such product for purposes other than resale, that only requests that the consumer of such product provide to the manufacturer a minimal level of personal information needed to enable the manufacturer to contact the consumer in the event of a recall of the product.

(5) SMALL HOUSEHOLD APPLIANCE.—The term ''small household appliance'' means a consumer product that is a toaster, toaster oven, blender, food processor, coffee maker, or other similar small appliance as provided for in the rule promulgated by the Consumer Product Safety Commission.

SEC. 4. RULE REQUIRING SYSTEM TO PROVIDE NOTICE OF RECALLS OF CERTAIN CONSUMER PRODUCTS.

(a) IN GENERAL.—The Commission shall promulgate a rule under section 16(b) of the Consumer Product Safety Act (15 U.S.C. 2065(b)) that requires that the manufacturer of a covered consumer product shall establish and maintain a system for providing notification of recalls of such product to consumers of such product.

(b) REQUIREMENT TO CREATE DATABASE.—

(1) IN GENERAL.—The rule shall require that the system include use of product safety owner cards, Internet registration, or an alternative method, to create a database of information regarding consumers of covered consumer products, for the sole purpose of notifying such consumers of recalls of such products.

(2) USE OF TECHNOLOGY.—Alternative methods specified in the rule may include use of on-line product registration and consumer notification, consumer information data bases, electronic tagging and bar codes, embedded computer chips in consumer products, or other electronic and design strategies to notify consumers about product recalls, that the Commission determines will increase the effectiveness of recalls of covered consumer products.

(c) USE OF COMMISSION STAFF PROPOSAL.—In promulgating the rule, the Commission shall consider the staff draft for an Advanced Notice of Proposed Rulemaking entitled ''Purchaser Owner Card Program'', dated June 19, 2001.

(d) EXCLUSION OF LOW-PRICE ITEMS.—The Commission shall have the authority to exclude certain low-cost items from the rule for good cause.

(e) DEADLINES.—

(1) IN GENERAL.—The Commission—

(A) shall issue a proposed rule under this section by not later than 90 days after the date of enactment of this Act; and

(B) shall promulgate a final rule under this section by not later than 270 days after the date of enactment of this Act.

(2) EXTENSION.—The Commission may extend the deadline described in paragraph (1) if the Commission provides timely notice to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

By Mr. NELSON of Florida (for himself, Mr. LIEBERMAN, Mrs. MURRAY, Mr. REID, Mr. DAYTON, Mr. ROCKEFELLER, and Mr. COLEMAN):

S. 585. A bill to amend title 10, United States Code, to repeal the requirement for reduction of SBP survivor annuities by dependency and indemnity compensation; to the Committee on Armed Services.

Mr. NELSON of Florida. 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. 585

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 ''Military Retiree Survivors Relief Act of 2003''.

SEC. 2. REPEAL OF REQUIREMENT OF REDUCTION OF SBP SURVIVOR ANNUITIES BY DEPENDENCY AND INDEMNITY COMPENSATION.

(a) REPEAL.—Section 1451(c) of title 10, United States Code, is amended by striking paragraph (2).

(b) PROHIBITION ON RETROACTIVE BENEFITS.—No benefits may be paid to any person for any period before the effective date specified in subsection (c) by reason of the amendment made by subsection (a).

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on—

(1) the first day of the first month that begins after the date of the enactment of this Act; or

(2) the first day of the fiscal year that begins in the calendar year in which this Act is enacted, if later than the date specified in paragraph (1).

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Tuesday, March 11, 2003, at 2:30 p.m. in Room 485 of the Russell Senate Office Building to consider the Committee's Views and Estimates on the President's FY 2004 Budget Request for Indian Programs.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

SUBCOMMITTEE ON NATIONAL PARKS

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on National Parks of the Committee on Energy and Natural Resources. The purpose of this hearing is to conduct oversight on National Trail designations and the potential impact of National Trails on private lands, communities, and activities within the viewshed of the trails. In addition, the Subcommittee will receive testimony on S. 324, a bill to amend the National Trail System Act to clarify Federal authority relating to land acquisition from willing sellers for certain trails in the National Trails System.

The hearing will take place on March 25, 2003 at 2:30 PM in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact: Tom Lillie at (202) 224–5161 or Pete Lucero at (202) 224–6293.

AUTHORITY FOR COMMITTEES TO MEET

SPECIAL COMMITTEE ON AGING

Mr. CRAIG. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet on Monday, March 10, 2003 from 2:00 p.m.—5:00 p.m. in Dirksen 628 for the purpose of conducting a hearing.

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

PRIVILEGE OF THE FLOOR

Mr. CRAIG. Mr. President, I ask unanimous consent that Mark Carlson, a fellow in Senator HATCH's office, be given the privilege of the floor for the remainder of today's session.

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

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276d–276g., as amended, appoints the Senator from Idaho (Mr. CRAPO) as Chairman of the Senate Delegation to the Canada to the Canada-U.S. Interparliamentary Group conference during the 108th Congress.

The Chair, on behalf of the Vice President, in accordance with 22 U.S. 1928a-1928d, as amended, appoints the Senator from Delaware (Mr. BINDEN) as Vice Chairman of the Senate Delegation to the NATO Parliamentary Assembly during the 108th Congress.

ORDERS FOR TUESDAY, MARCH 11, 2003

Mr. VOINOVICH. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Tuesday, March 11. I further ask 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 consideration of Calendar No. 19, S. 3, the partial-birth abortion bill; that at 11 a.m., the Senate return to executive session and resume consideration of the nomination of Miguel Estrada to be a circuit judge for the DC Circuit, and that the time until 12:30 p.m. be equally divided between the two leaders or their designees; that at 12:30 p.m., the Senate recess until the hour of 2:15 p.m. for the weekly party caucuses; and that upon reconvening at 2:15 p.m., the Senate return to legislative session and resume consideration of S. 3.

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

PROGRAM

Mr. VOINOVICH. Mr. President, for the information of all Senators, tomorrow the Senate will resume the consideration of S. 3, the partial-birth abortion bill. It is my understanding that Senator MURRAY will be prepared to offer an amendment first thing tomorrow morning. The leader has indicated it is his intention to finish this important legislation by the end of the week. Therefore, I encourage any Senators who wish to offer an amendment to the bill to work with the bill managers so they can arrange time for amendment consideration.

At 11 a.m., the Senate will return to the Estrada nomination and begin a critical debate on the judicial nominations process and the long-term implications the current filibuster will hold for this body. Members are encouraged to come to the Chamber and engage in this vital discussion.

Following the recess, the Senate will return to consideration of the partial-birth abortion bill. Additional amendments are expected, and therefore Members should anticipate votes during tomorrow's session.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. VOINOVICH. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:03 p.m., adjourned until Tuesday, March 11, 2003, at 9:30 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate March 10, 2003:

THE JUDICIARY

GREGORY L. FROST, OF OHIO, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO.