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Senate

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

PRAYER

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

Let us pray.

Eternal and Almighty God, You are the alpha and omega, the beginning and the ending. Keep us alert to the needs of our time. Give us enough humility to respect the opinions of others and enough wisdom to acknowledge our common humanity. Give this Senate a unity of mind and purpose and the realization that all things work together for good to those who love You. Bless our military men and women who stand as guardians of our freedoms. Lord, from the cradle to the grave, we need You. Guide and sustain us until the journey ends. We pray this in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

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

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will resume debate on S.J. Res. 17, relating to the disapproval of an FCC rule. Under the order, the vote will occur on passage of that resolution at 10:45 this morning.

Following that vote, the Senate will resume consideration of the energy and water appropriations bill. Pending is the Feinstein amendment relating to the robust nuclear earth penetrator. I encourage Members who would like to speak to that amendment to remain following the vote on the FCC resolution. It is hoped we can dispose of that amendment and continue with additional amendments to the energy and water appropriations bill.

Rollcall votes will occur throughout the day as we attempt to finish our work on this bill, which will be the sixth appropriations bill to be completed.

In addition, we will resume consideration of the House message to accompany S. 3, the partial-birth abortion ban, for the remaining 6 hours. Last night, the Senate used 2 of the 8 hours that were provided under the previous unanimous consent agreement. We will return to the debate following today's action on the energy and water bill.

Also, today, we will recess from 12:30 to 2:15 for the weekly party luncheons to meet.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The acting minority leader is recognized.

Mr. REID. Mr. President, I think we might be in a position to set a time for a vote on the Feinstein amendment. If we do that, I think it would be to everyone's best interests. Maybe it could be right after the caucuses or something such as that.

Mr. FRIST. Mr. President, at this juncture, until I talk to our manager of the bill, I do not want to establish a fixed time. I do want to proceed to that vote earlier rather than later. We will continue that discussion and understand that they are ready fairly early in the day.

RESERVATION OF LEADER TIME

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

DISAPPROVING FEDERAL COMMUNICATIONS COMMISSION BROADCAST MEDIA OWNERSHIP RULE

The PRESIDENT pro tempore. Under the previous order, the Senate will resume the consideration of S.J. Res. 17, which the clerk will report.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 17) disapproving the rules submitted by the Federal Communications Commission with respect to broadcast media ownership.

The PRESIDENT pro tempore. The time until 10:45 is equally divided between the two leaders or their designees.

Who yields time?

The Senator from North Dakota.

Mr. DORGAN. Mr. President, I yield 10 minutes to the Senator from Texas.

Before yielding, let me just briefly say, this resolution of disapproval dealing with the rules on broadcast ownership by the Federal Communications Commission is a rarely used——

Mr. MCCAIN. Mr. President, is the Senator from North Dakota granting himself time?

Mr. DORGAN. Mr. President, there is 30 minutes granted to each side, as I understand it.

The PRESIDENT pro tempore. The time until 10:45 is equally divided.

Mr. DORGAN. Mr. President, let me grant myself such time as I may consume. Then I will yield 10 minutes to the Senator from Texas.

The PRESIDENT pro tempore. The Senator is recognized.

Mr. DORGAN. I was simply making the point that this is a resolution of disapproval. It is rarely used in the Senate. I think this is only the second time it has been used. But this is a critically important issue. We will have a number of speakers describing why this resolution of disapproval has been brought to the floor of the Senate.

I yield 10 minutes to the Senator from Texas.

The PRESIDENT pro tempore. The Senator from Texas.

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

Mrs. HUTCHISON. Mr. President, I rise today to speak for the resolution that would disapprove the FCC ruling of June 2. In 1996, we passed the Telecommunications Act which said Congress should work toward deregulating the media. We charged the FCC with ensuring the protection of competition, diversity, and localism.

I think the rule that came out does the opposite. It does not protect the localism and the diversity, particularly in the newspaper and television markets. We must turn back the entire rule, even if we agree with part of it, in order to tell the FCC to go back and start again.

I think the FCC could come up with another rule which would have some of the components of its June 2 rule, along with taking out parts that many of us believe actually will hurt localism.

There are 100 Senators in this body. Probably each one has a different view of what would be best in the media. Overall, I think it is important for us to be more cautious rather than less cautious, because what can happen if you lower the number of voices in the media, and companies make investments based on the rules at the time, is later, down the road, if you determine that, in fact, we have lowered the number of voices in the media—and it is to the detriment of the consuming public—then I don't think you should penalize the companies that made decisions based on the rules at the time.

I think stability in regulations is a good business principle. I think if you look at the particular part of the rule that deals with newspaper/television cross-ownership, you have the worst part of the decision and the one that concerns me the most. And we have examples because three companies were grandfathered when the rules were made on cross-ownership. So we have seen what can happen in a local market when a company is allowed to own the only newspaper in town plus the major television station in town, and then perhaps even radio.

I believe radio is pretty diversified. I do not think we have a problem with the number of voices in radio. My concern is ownership of the only newspaper in a market plus a major television station in the market. And we have examples of that.

In Dallas, we have one company that owns the only newspaper in town plus the largest ABC television affiliate, which has the largest market share of viewers for all editions of the news.

In Atlanta, we have one company that has the only newspaper in town that is a regular newspaper. It also owns the major television station in town, one of the Nation's top performing ABC affiliates, and it also happens to own 25 percent of the radio market. So I think that is a pretty alarming amount of concentration.

Maybe they do a good job. But what we are talking about is not Atlanta. We are not talking about Dallas. They do good jobs in many respects. What we are talking about is other cities and allowing this kind of concentration to pop up all over the country—the only newspaper in town plus the major television station.

In the FCC's own poll, it showed that 74 percent of the people in a community get their local news from a combination of television and newspaper—74 percent. If you have one company owning the newspaper and the major television station, you have a concentration that could be unhealthy. If it is unhealthy, it will be too late to go back and retrofit because these companies will make these investments based on the rules of the time.

We should proceed with caution. I think we should overturn this rule, ask the FCC to go back to the drawing board and take more testimony. They had one hearing—one hearing—before they came out with this rule. Two of the members of the Commission were so concerned that they went out across the country and had hearings of their own. But even though there was a lot of testimony, it does not appear that the FCC took that testimony into account when they made this rule of June 2. In fact, those two members voted the other way.

They had heard the people speak, and they were concerned about this kind of concentration.

So whether you agree in part with the FCC or not at all, I hope you will support the turning back of the rule so that we will give the FCC a chance to go back to the drawing board, hear what Congress says, hopefully hear more from the public, and come out with rules particularly in the area of newspaper/television cross-ownership that I think should continue the ban.

Congress passed the law in 1996, giving the responsibility to the FCC. Some people say: Well, why is Congress getting involved? Well, it is Congress's responsibility to get involved with regulators when the regulators do not implement the law that Congress passed when they were given the responsibility to do just that. It would be an abdication of our responsibility if a majority of Congress disagreed with part of the ruling that we would not take control of the decision. We are the elected representatives. The FCC is an appointed body to which we have delegated responsibility to make rules. If we do not agree with the entire rule, it is our responsibility to act, and that is why the Congressional Review Act was passed.

I want to talk for a minute about what this is not. I was amazed, because I think very highly of the Wall Street Journal in most respects—in almost every respect—but they had an editorial last Friday that said if we turn back the rule on cross-ownership of newspapers and television, somehow this is going to bring back a review of the fairness doctrine.

I do not support the fairness doctrine. I think radio is quite diversified. I think the voices that are coming into radio are very healthy. I think talk radio has given voice to the silent majority. The last thing this has anything to do with is the fairness doctrine, and yet my friend Rush Limbaugh and the Wall Street Journal somehow tied the fairness doctrine to a newspaper/television cross-ownership issue.

Letting one entity own the only newspaper in town and the major television station in town is lowering the number of voices in the media, not increasing the number. So while some people are more concerned about the 35 to 45 percent, I am focused on the newspaper/television ownership that I think affects our country.

The PRESIDENT pro tempore. The Senator's time has expired.

Mrs. HUTCHISON. I ask unanimous consent for 1 additional minute.

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

Mrs. HUTCHISON. I will close by saying that when we are talking about lowering the number of voices in the media, we should proceed with caution. Voting for this resolution of review says to the FCC: You went too far in some respects—not every respect. We may disagree on the areas, but you need to listen more to Congress and to the people who have spoken.

I hope people will vote yes, and I hope the FCC will be responsive.

I thank the Chair. I yield the floor.

The PRESIDENT pro tempore. Who yields time?

Mr. MCCAIN. Is the Senator speaking for or against?

Mr. FEINGOLD. Mr. President, I am speaking for.

Mr. DORGAN. Mr. President, I think appropriately at this point, Senator MCCAIN in opposition will yield time and then I will be happy to yield time to the Senator from Wisconsin at an appropriate time.

Mr. MCCAIN. How much time does the Senator from Louisiana wish?

Mr. BREAUX. A couple minutes—3 minutes.

Mr. MCCAIN. I yield 5 minutes to the Senator from Louisiana.

The PRESIDENT pro tempore. The Senator from Louisiana is recognized for 5 minutes.

Mr. BREAUX. I thank the distinguished chairman of the committee.

Mr. President, I will just make a couple of comments in opposition to the resolution because I think the resolution is sort of a broad-brush approach that takes down everything the FCC has recommended, things that make sense that are good and also things about which some people may have questions. It really is a resolution that assumes, in my opinion, that if things are small, they are necessarily good; if things are big, they are necessarily bad.

I think particularly as this is clearly spelled out with regard to part of the FCC's rule that deals with the question of television ownership, the rule from the FCC basically allowed the television stations to move up to a 45-percent-of-viewer cap before they would be

prohibited from owning additional television stations.

It seems to me that if you look at media concentration now, you have 1,721 television stations in the United States and the networks only own a very small percentage of those stations. If you consider the people who watch the stations, you will find also that the viewership of these network-owned stations, indeed, is very small.

It is not as if a couple of networks have all the viewers and are therefore monopolizing what people see and there is no diversity. That is simply not the fact at all. If you look at Viacom, which owns CBS, in prime time viewing, they have about 3.4 percent—3.4 percent of the total TV households. News Corp, which owns Fox, has about 3.1 percent. General Electric, which owns NBC, has 2.8 percent. And Disney, which has ABC stations, has about 1.5 percent of the total TV households watching their network programming in prime time.

The problem with the argument that the cap is somehow going to change things and make a concentration of ownership of what people see makes no sense whatsoever, because the way it is currently measured, stations that are in large television markets are assumed to have everybody in the market watching their stations.

A station that is owned by the network that happens to have a station in Los Angeles, Houston, Miami, New York, or Chicago probably exceeds a cap of 35 percent of the potential viewing audience, but in reality they may have only a very small number of people in those cities actually watching them.

So the standard of measurement that we use is totally illogical. It would be like saying an automobile dealer in New York has 6 percent of the total sales in the United States because New York is about 6 percent of the market. That would be fine if the automobile dealer sold every car that is bought in New York, but that is not the case. There are probably literally thousands of other competitors in that market.

The same thing is true in the television market. As an example, an ABC station in Los Angeles does not have everybody in the Los Angeles market watching their station. There are probably 200 to 300 additional stations that a viewer can watch in the evenings and look at a diverse range of programs that happen to be available.

So the argument that because a station happens to have a tower in a large city it has all the viewers in that city is illogical at best and misleading in fact.

Another point is when we look at the amount of diversity that networks give, obviously the studies have shown they, in fact, offer far more local programming than nonnetwork-owned stations. Those facts are clear. They are indisputable.

I think what we do in saying we are going to throw out what the FCC has done makes no sense. The network-owned stations, in fact, show about 37 percent more local news than locally owned stations do. So I argue that this resolution be voted down.

I yield the remainder of my time.

The PRESIDENT pro tempore. The Senator's time has expired.

Who yields time?

Mr. DORGAN. Mr. President, I yield 4 minutes to the Senator from Wisconsin.

The PRESIDENT pro tempore. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I will vote in favor of S.J. Res. 17, the bipartisan resolution of disapproval which would overturn the Federal Communications Commission's new rules on broadcast media ownership. I am very proud to be an original cosponsor of this measure because I believe the FCC has acted in gross disregard of its mandate, of good public policy, and of the will of the American people.

When the public became aware that the Federal Communications Commission was considering new rules on media consolidation earlier this year, the explosion of concern was immediate, heartfelt, and unprecedented. Close to three-quarters of a million people registered their views with the FCC before it issued its decision, more than for any proceeding in its history. Public opinion was almost unanimous in opposition to further relaxation of media ownership restrictions.

So how did the FCC respond to this clear statement of the will of the people? With the back of its hand. Only one official public hearing was held. This was more than carelessness or bureaucratic inertia. This was simple disdain for the public in whose interest the FCC by statute is required to act.

Among the many letters I have received on this issue was one from Nicholas Dzubay, a Republican alderman on the city council of Barron, WI. Alderman Dzubay said his area's radio stations were suffocating under the control of a single corporation. He hopes we will not allow television and other broadcast media in his area to be monopolized in the same way.

I was also particularly struck by a letter from the Reverend Robert Stiefvater, the Vocations Director for the Archdiocese of Milwaukee. He wrote:

> I find it very difficult to get news into our local market here in Southeastern Wisconsin. The FCC's June 2 decision to radically weaken the remaining ownership rules will unacceptably harm my ability, the Archdiocese's and its community's ability to receive and distribute local independent programming.

If any of us doubts the dangers of the road down which the FCC wants to send us, the story of American radio stands as a powerful warning. Unprecedented consolidation followed the Telecommunications Act of 1996, but the real story is told over the airwaves. Radio does not sound like it used to. Like most of us in the Senate, I travel a lot, and wherever I go, radio stations sound more and more alike. Why? Because they are no longer programmed by local DJs but by executives at corporate headquarters hundreds of miles away.

As we begin to examine the issue of file-sharing, and look for ways to protect copyright owners and artists from infringement of the copyrights on works they struggled to create, we should keep in mind that there used to be a time when American young people heard new music on the radio, when they explored the variety of musical styles and genres by flipping channels. DJs used to make a name for themselves by playing new artists, or taking changes on records other DJs had overlooked. New local programmers do not have the freedom to deviate from the corporate playlist, and young people are turning off their radios and booting up file-sharing programs like Kazaa.

The homogenization of American radio is a grim predictor of the consequences of deregulation. If allowed to stand, the FCC rules will ravage the independence and character of other forms of media, from television to newspapers, the way radio has already been ravaged. This resolution is our chance to say no.

If this resolution of disapproval passes, I hope the FCC will finally understand how seriously we in Congress feel about this issue. I hope the FCC gets the message. They did not just make an honest mistake. They did not just misinterpret a complicated or ambiguous statute. They headed off in entirely the wrong direction. They ignored the will of the American people. That is why I will support this resolution, and I urge my colleagues to do so as well.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. MCCAIN. Mr. President, I yield 10 minutes to the Senator from Nevada.

The PRESIDENT pro tempore. The Senator from Nevada is recognized for 10 minutes.

Mr. ENSIGN. Mr. President, I rise to speak against the resolution that we have before us today. I will make a few points that are being overlooked in this debate. First, when the original ideas for this cap on percentage of media ownership were put into place, they were put into place because of the principle that we did not want a small group of people owning our airwaves to the point where they would be able to control thought, whether it is political thought or any other kinds of thought, in the United States. So when these were put into place, we had basically three networks.

When I was growing up, there virtually was no cable and everybody had over-the-air broadcast television. We had the three stations, and whatever were on those three stations is what one watched. We were lucky to have one or two, maybe three, radio stations, especially if we were not in a major media market.

The reality of today is that we not only have the over-the-air broadcast with the three networks, we also have Fox, UPN, and others, but we have systems whereby the vast majority of the homes in America can either get cable or some kind of a direct satellite TV system that has hundreds of stations which provide news, which provide entertainment, which provide all kinds of information.

In media markets, for instance, where I live in Las Vegas, NV, someone cannot turn the dial without getting a new radio station, both AM and FM. The choices are incredible. Other types of information we have coming into our household today include the Internet. Anybody can set up Web sites or news information-sharing sources. That is becoming a larger part of how people get their information.

Other than the major media outlets, there is the Drudge Report and other places on the Internet where people are getting information. The point is that there are so many more places for information to be had today than when these rules at 25-percent caps were initially put into place.

The other major point I make is that what we are talking about is potential viewership. Right now, the cap is set at 35 percent. It wants to be raised to 45 percent. I believe the FCC tinkered a little bit around the edges. This is not the tidal wave of change that people are talking about. This is a minor change in that it is potential viewership, it is how many homes can be reached. It is not how many people are watching a station at any one time. It is how much potential reach can one have into the home?

So we are not only saying it does not matter how many choices one has, it only matters how many homes can somebody potentially reach. It does not matter if somebody reaches 100 percent of the homes, as long as they have plenty of other choices. We should be making sure there are plenty of choices. When people choose which station they watch, they should be free to choose whatever stations they want.

We have also heard mention in this debate about cross-ownership with newspapers. One of the big complaints I hear about localism is that a lot of the TV stations today do not cover local politics. We know when there is cross-ownership there are more resources, especially in smaller media markets where necessarily TV stations or the newspapers do not have the kind of resources to put good reporters on the beat and they do not cover as much local politics. When there is cross-ownership, we see 50 percent more local news and public affairs programming, and an important thing is that local politics is covered. This is one of the big gripes I had in my last few campaigns, that the local TV stations—whether they are owned inside the State or outside the State, it was the same thing—didn't cover local politics enough.

I happen to be a Republican. In Las Vegas, NV, these two entities I am going to talk about lean more to the left. There is a TV station in cross-ownership with one of the newspapers in Las Vegas and, since they have been in existence, the coverage of local politics, not only by them but also by their competitors, has increased dramatically. I think that is good. That is more localism. There is cross-ownership there, but that is localism.

I think the precautions the FCC has put into place on cross-ownership, where you have to have a certain number of TV stations within a market if there is only one major newspaper, are the right kind of precautions to put in.

The point is, are we giving people choice? Where they choose to view is up to them. We should not be in the business of regulating what they watch, what they read, and who owns those, if we have enough choices in an area. I actually believe the FCC could have gone farther than they went. This is a very conservative move they have made today. If we are starting to be in the business of regulating how many people you can attract to your television stations, then we are starting to regulate whether you are getting too popular. That seems to be wrongheaded, in my opinion.

It seems to be right that if you have a couple of gas stations in an area, as long as you have choice among the gas stations, that is the important aspect. You don't want a monopoly saying this is the only gas station to which you can go. If we have 200 different gas stations, it doesn't matter whether Exxon reaches 100 percent of the cities in the United States. If there are 200 different gas stations in each one of the markets around the country, who cares? Because there would be competition to make sure Exxon is keeping its gas at the right price; otherwise, they would not be able to compete.

That is the same thing we have here. It really doesn't matter, in my opinion, whether ABC or NBC covers the entire United States. If there are 200 active choices just on television to be able to choose from, then let people choose where they are going to watch based on their remote control or based on how they flip channels. That seems to be the right kind of choices America should be all about.

We are in this fear. There are some on the right and there are some on the left who are afraid that either liberals or the conservatives are going to control too much of the media and control too much thought in one regard. Whichever side of the political spectrum people may have had a bad personal experience because in their area maybe the liberals controlled it or in another area maybe the conservatives controlled it. People complain about Fox News today; people complain about talk radio; you hear conservatives complaining about the major TV networks and all that. But as long as people have the choices of where they view, the market will determine where they get their information based on people choosing which stations they choose to watch.

That seems to me to be the American way. Let there be plenty of choices out there. Let freedom ring, basically, and then Americans will choose what the percentage of viewership is based on the choices they make.

In this Senator's opinion, this resolution before us today would go the exact opposite way of that we should be going. We should be liberalizing these rules so broadcast stations have a chance to compete. We are watching daily the quality of programming in our broadcast television go down because it is incredibly expensive to produce those shows today. So we are seeing more shows like ''Survivor,'' with these people on reality television shows that frankly don't cost a lot of money to produce because you don't have to pay the big actors. We want to reverse that trend, go the other way, and the way to do that is to liberalize the ownership rules.

I yield the floor.

The PRESIDENT pro tempore. Who yields time?

Mr. DORGAN. Mr. President, I yield 3 minutes to the Senator from Washington, Senator MURRAY.

The PRESIDENT pro tempore. The Senator from Washington is recognized for 3 minutes.

Mrs. MURRAY. Mr. President, like many Americans, I was disappointed by the Federal Communications Commission's recent order on media ownership. As my colleagues know, on June 2 the FCC voted to relax the rules on media ownership. That order could reduce local news coverage and could hinder the diversity of views presented in the news media.

I rise in support of the bipartisan resolution offered by Senators DORGAN and LOTT to invalidate the FCC's media ownership order. Passage of this resolution will help ensure that the marketplace of ideas is not dominated by a few corporate conglomerates at the expense of our citizens and our democracy.

Since its founding, our Nation has always recognized the importance of a free press in helping citizens make informed decisions on critical public issues. Over the past few years, we have seen massive mergers take place in many industries, but Americans recognize that the news media are different. They don't just produce a product to make a profit. They also provide a vital public service that could be undermined if just a few mega-corporations control what we can read, see and hear. That is why the FCC's order has provoked such a large public backlash.

By a 3–2 vote, the FCC made two major changes. First, it lifted a restriction that prevents mergers between newspaper and television stations in the same market. This is known as the cross-ownership rule. Until now, that restriction has ensured that one company does not control both newspaper

and television coverage in an area. That helps ensure that consumers have access to diverse sources of information.

By eliminating this cross-ownership rule, however, consumers could end up with fewer voices and perspectives on the public airwaves and in the newspaper. The number one television station in a market could be owned by the dominant newspaper or even the only newspaper in that same market. We are not talking about something that could happen in just one or two cities. This could happen all over the country. Down the road, the order could encourage just a handful of powerful corporations to own nearly every media outlet. That could hinder diverse and alternative viewpoints. It could also mean fewer reporters and resources for covering local and community events.

The newspaper market is already much less diverse than it was 25 years ago. Since 1975, two-thirds of independent newspaper owners have disappeared. The FCC's first order sets the stage for a further reduction in independent newspaper ownership.

The FCC's second order would allow broadcast networks to own more stations across the country. Currently, one broadcast network cannot own stations that reach more than 35 percent of the public. The FCC just raised that limit to 45 percent. This order threatens to reduce the amount of local news coverage available to citizens. Just look at what has happened in the radio industry. National radio networks have gobbled up local stations. Many have consolidated their news operations to the detriment of local consumers. Getting rid of local news coverage is not good for our local communities and their residents. This change could be especially troubling in rural areas.

I have been working on this issue for several months, and I believe we have reached a critical juncture that calls for Senate action.

On April 9, nearly 2 months before the ruling, I sent a letter to FCC Chairman Michael Powell along with 14 other U.S. Senators from both political parties. We asked the FCC to let the Congress and the public review and comment on the proposed changes before they were enacted.

When the order came out in June, I expressed my concerns.

A couple of weeks ago in the Appropriations Committee, I echoed the comments of Senators DORGAN and HUTCHISON on the need to either fix or eliminate this order through action on the Senate floor, and that is why I'm here today in support of this resolution.

The rule was scheduled to take effect on September 4, but was postponed when the Third Circuit Court of Appeals issued a temporary stay. This stay could be lifted if the FCC meets the court's requirements, so the Senate needs to act quickly.

One option before the Senate is to pass a law invalidating the FCC's order. Unfortunately, that approach would still leave the door open for the FCC to simply rewrite the rule and do an ''end run'' around Congress. A better way to invalidate the rule is to use the Congressional Review Act, CRA. It would stop the rule and would also prevent the FCC from re-imposing it later under a different name.

In the Appropriations Committee, we included a provision that would lower the media cap back to 35 percent. That mirrored a similar provision in the House's Commerce, Justice, State, and Judiciary Appropriations bill. We must finish the job today by using the CRA to invalidate the whole rule.

Mr. President, 80 percent of Americans get their news from local TV and newspapers. We cannot allow a handful of corporations to dictate what all Americans can see, hear, and read as they make decisions on critical public issues. I urge my colleagues to vote for diverse media ownership by supporting this resolution.

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

Mr. MCCAIN. Mr. President, I yield the Senator from Alaska such time as he may consume.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I oppose this resolution which would disapprove all of the FCC's recent rulings on media ownership. I oppose it for several reasons.

In the first place, the court of appeals has stayed this resolution, and it is reviewing its contents. I do not think it is appropriate for the Senate to pass such a resolution when there already exists legislation that addresses the most contentious media ownership issues.

As one of the original sponsors of the legislation that is on the calendar already, I urge the Senate to take up that bill and not approve this resolution. My legislation, S. 1046, has the support of a majority of the Members of the Senate Commerce Committee.

I do not support this attempt to unravel everything that the FCC did regarding the media ownership rules. For the most part, I think the Commission did a good job on the media ownership issues, absent one issue regarding 35 percent.

My main concern all along was to keep the national ownership cap at the 35 percent level, and that was the primary focus of the bill that I introduced. In fact, that bill already passed out of the Commerce Committee.

My bill prohibits ownership of TV broadcast stations if the ownership exceeds 35 percent of the national TV audience. It maintains the status quo for the cap and closely tracks what Congress originally intended in the Telecom Act.

There were several amendments that were added to my bill in the Commerce Committee which addressed other parts of the rules. One was offered by my colleague from North Dakota. That amendment undid the Commission's decision to lift the cross-ownership ban.

I didn't agree with his original amendment because I thought that the FCC's decision to lift the cross-ownership ban was prudent. I was concerned that the amendment of the Senator from North Dakota didn't contemplate situations in small markets where cross-ownership between newspapers and TV stations is necessary. Therefore, in committee I added language to his amendment which allows for a waiver procedure in small markets.

This pending resolution, however, does not contemplate the small markets at all in the context of cross-ownership. This concerns me and should certainly concern others as well, especially those who represent small markets.

Last week the Third Circuit issued an order staying the FCC media ownership rules, pending resolution of the consolidated proceeding before that court. Therefore, this Third Circuit stay has creates status quo allowing the stake holders to fully brief and argue their sides.

Finally, the issue that has received the most support and attention from my colleagues and from diverse interest groups is the 35 percent cap issue. That issue has been addressed by both the House in the CJS appropriations bill and by the Senate Appropriations Committee in the CJS bill.

Therefore, with all of these various tracks already in play, I don't think it is wise to open another can of worms on the same issues. It is not productive.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I will use my leader time to make a statement on the matter before us.

Mr. President, the Senate faces a critical decision today—whether new media ownership rules proposed by the FCC truly serve the public interest. They do not, and we should pass this resolution of disapproval and force the FCC to rework them.

On June 2, 2003, the Federal Communications Commission adopted new broadcast media ownership rules that would allow greater concentration of ownership of U.S. broadcast television stations, both at the national and local levels. At the national level, a single owner could own stations capable of reaching up to 45 percent of the national audience—up from 35 percent—under the new rules. A single entity could reach up to twice that percentage of the national audience if he or she owned UHF stations. In most markets, duopolies ownership of two stations in the same market would be allowed, and triopolies would be allowed in the largest markets.

The new rules would also allow cross-ownership of broadcast television stations and major newspapers in all but the smallest of media markets as well as greater cross-ownership of television

and radio stations. The rules would theoretically allow one owner to reach 90 percent of national TV audience and, in a large market, own three television stations, eight radio stations, the only daily newspaper, and the cable company.

The public overwhelmingly opposes these new rules. In fact, a recent CNN poll found that 96 percent of Americans believe there is already too much media concentration—that ownership of too many media outlets is already under the control of too few corporations.

Why should Congress care? For several reasons.

Congress has repeatedly mandated, most recently in the Telecommunications Act of 1996, that the FCC serve the public interest by promoting competition, diversity of viewpoints, and localism. These rules fail on all counts.

First, competition. Remember that there are a limited number of broadcast licenses available. Ted Turner, who bought one station and turned it into a media giant, addressed the rules' potential effect on competition. Turner wrote in an op-ed that if he had been faced with the FCC's new rules, he never could have started his own media company: ''If a young media entrepreneur were trying to get started today under these proposed rules, he or she wouldn't be able to buy a UHF station, as I did. They're all bought up,'' he wrote.

Turner added that even if that young entrepreneur could buy a UHF station, he or she wouldn't have access to the programming and distribution needed, as both are largely controlled by the major media companies. ''Today both (programming and distribution) are owned by conglomerates that keep the best for themselves and leave the worst for you if they sell anything to you at all. It's hard to compete when your suppliers are owned by your competitors,'' he said.

Second, independence and diversity of viewpoints. Many argue there are an infinite number of media outlets today, especially given the huge growth in cable channels and internet addresses. But the vast majority of Americans get their news and information from television news and/or their local newspaper. And realize that none of the cable news channels have anywhere near the viewership of the broadcast media, and that most of the major cable and internet news outlets are affiliated with the print and broadcast media that are already controlled in large part by just a handful of companies. Diversity of viewpoints is already in jeopardy, and the new rules would only exacerbate the situation.

Third, localism. If many of those so-called diverse viewpoints are actually controlled by a handful of companies, then one can see that localism, too, is in trouble. The loss of localism in radio is well known, sometimes with dangerous consequences like the famous Minot, ND case that Senator DORGAN has talked about. In fact, the lack of localism in radio is so undeniable that even the FCC has agreed to address it in the one aspect of the proposed rules that makes sense.

But localism in television is also at risk local entertainment choices as well as news. James Goodman of Capital Broadcasting in North Carolina explained it well in his testimony before the Commerce Committee. He owns Fox and CBS stations in Raleigh. Out of respect for his local audience's sensibilities, he has refused to carry either network's ''reality TV'' shows, including ''Temptation Island,'' ''Cupid,'' ''Who Wants to Marry a Millionaire,'' and ''Married by America.'' His actions have met with intense resistance from the networks, and he has expressed his grave concern that if the networks' ability to own more and more of the broadcast outlets goes unchecked, local stations and communities won't have any ability to choose their own programming. They will be forced to air the network fare, even when it is offensive to local viewers.

Finally, and most important, there is an even more basic threat posed by these new rules: It is a threat to democracy itself. The integrity of our democracy depends on an informed electorate. Again, the vast majority of Americans get their news and information from television and/or their local newspaper. If we allow the limited broadcast spectrum to be controlled by a handful of companies, how can we maintain the free marketplace of ideas?

Those in the print media rightfully chafe at the prospect of government restrictions. Anyone in America has the right to print their ideas. But when we talk of broadcast media, we are talking about public airwaves, and that is a different matter altogether. Again, space on the spectrum is limited, and so are broadcast licenses. And the FCC was created to regulate them in the public interest—not to rubber-stamp the industry's wish list.

Not only are the new rules a threat to democracy, but the process by which they were approved is a threat to democracy.

In response to pressure from the Democratic appointees to the Commission, FCC Chairman Michael Powell called only one official field hearing. Field hearings are intended to solicit input from the general public from across the country to overcome the ''inside the Beltway'' virus that often infects policies born in Washington, DC. Chairman Powell's ''field'' hearing was held 90 miles from Washington, and much of his invited testimony came from industry representatives, many of whom, in fact, live and work inside the Beltway.

It appears the Chairman thought a pro-industry decision would sail through with minimal attention. After all, other than paid lobbyists, how many people have the time to follow the details of an FCC decision-making process? But a funny thing happened on the way to the vote. As soon as people outside the Beltway did learn what the FCC was planning to do, they protested, and they protested in large numbers.

Of the 2 million individuals who commented on the FCC's proposed rules, 99 percent opposed them. Ninety-nine percent. Of the first 10,000 comments that were sampled separately, there were only 57 comments in favor of the rules, and only 11 of those 57 were from people with no vested interest in the rules changes.

Those margins are essentially unheard of in American politics. Near unanimity. But in the halls of the FCC, that overwhelmingly negative input was essentially ignored. The votes of the American people didn't count. Only three votes counted—the votes of three commissioners who decided that they knew better than 99 percent of the people who commented on the rules.

The FCC's hasty process also effectively blocked public comment on many issues. Allowing for public comment isn't just the right thing to do. It generally leads to a better product. The FCC has an expert staff. But mistakes can and do happen. And an agency as determined to act quickly as the FCC was on this matter is more likely to make mistakes.

One such apparent mistake affects my state of South Dakota and would classify Sioux Falls as having more television stations than Detroit. It does so by counting five public broadcast stations as separate stations even though they broadcast the same signal. As a result, Sioux Falls is considered to have 11 stations instead of 7. And Sioux Falls, the 112th-largest market by population, is counted as having more stations than Detroit, the 10th-largest market.

Some commercial broadcasters own multiple stations that broadcast identical signals. FCC rules appropriately treat them as one station. But the exemption applies only to commercial stations, not public television stations. FCC Commissioner Jonathan Adelstein, a South Dakota native, identified the error and encouraged his colleagues to correct it, but the Commission has not done so.

The consequences of such an error are real. Because the new rules consider Sioux Falls to have 11 stations instead of 7, the city is placed in a category without any cross-ownership restrictions. That would allow the newspaper to acquire two television stations instead of one, and own twice as many radio stations as would be permitted if Sioux Falls were properly classified. Fortunately, I don't see any rush for that to happen. But who knows what a future owner of the Sioux Falls Argus Leader or one of the Sioux Falls television stations might wish to do? This is just the kind of mistake that could have been avoided if the FCC had employed the more deliberative, inclusive process that so many of us advocated.

Let's review the mission of the Federal Communications Commission, as stated repeatedly by the Commission and by acts of Congress: to serve the public interest by promoting competition, diversity of viewpoints, and localism. The public interest—that phrase should be italicized in this debate.

As we define the public interest, the public—the people who receive the radio and TV news and programming that beams across the airwaves their taxes paid for—has a right to be heard. Public comment, input, and involvement in our democratic processes is not a box to be checked before the petitions, call, e-mails, and letters are thrown in the trash and disregarded. It is a basic tenet of our social contract and the principle that underlies our form of government. Of the people, by the people, for the people.

I am all for ensuring the rights of the minority. Indeed, I feel strongly about our civic responsibility to ensure that a reactionary or powerful majority does not trample on the rights of those in our society whose voices are not as easily heard or fully represented. In fact, that's one key reason I oppose the substance of these rules—I fear the voices of those who may have quite valuable things to say, but lack the means to gobble up TV and radio stations, will not be heard.

But in this case we don't have a powerful majority trampling on the rights of the vulnerable. We have three people—with an obvious push from the current administration—trampling on the rights of the majority. To add insult to injury, they are telling the majority—the American people—that they are doing this in their interest. Of course, the interests being served are those of the handful of large media companies that already control a huge percentage of America's major media outlets.

Let me be clear: I don't blame the media companies for advocating for their own interests. They have every right to fight for their interests. I do blame the Chairman of the FCC and the other commissioners who voted for these rules for failing to give the rest of the country the consideration they deserved in this debate.

The Congressional Review Act was intended for exactly this kind of situation. A Federal agency has turned a deaf ear to the very public it was intended to serve. It is appropriate to send them back to the drawing board, especially if that is the only option available to us.

The Commerce Committee actually reported a bill that deals with the issues individually, and I would be happy to debate that bill. But it has been made clear to us that the majority has no intention of bringing the Commerce Committee bill to the floor, and we have no ability to force it to the floor before these rules take effect.

Mr. President, I want to make one final point. This isn't a partisan issue. The Republican supporters of this resolution of disapproval include Republican Party stalwarts like TRENT LOTT and KAY BAILEY HUTCHISON. It is not a liberal versus conservative issue, either.

The list of well-recognized people and organizations who oppose all or part of the FCC's media ownership rules is one of the strangest list of strange bedfellows you will ever hear. Opponents include Walter Cronkite, William Safire, the National Rifle Association, the U.S. Conference of Catholic Bishops, the National Organization for Women, Senator Jesse Helms, the National Council of Churches, MoveOn, the Parents Television Council, former Universal Studios Chairman and CEO Barry Diller, Mort Zuckerman, and many, many more. That sampling of the list gives you a sense of how broad and deep the opposition to these FCC rules is.

We should respect that overwhelming opposition and vote accordingly.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, parliamentary inquiry: How much time is remaining on both sides, and at what time will the vote take place?

The PRESIDING OFFICER. There are 18 minutes 39 seconds on your side and 15 minutes 45 seconds on the other side. The vote will occur around 11 o'clock.

Mr. DORGAN. Mr. President, I yield 3 minutes to the Senator from Maine, Ms. SNOWE.

The PRESIDING OFFICER. The Senator from Maine is recognized for 3 minutes.

Ms. SNOWE. Thank you, Mr. President. I thank Senator DORGAN for his remarkable leadership on this most important matter.

Drastic times require drastic measures. That is why I stand with my colleagues today in support of this resolution which will help and safeguard one of our most precious possessions—the right of free and diverse exchange of opinions.

The decision that has been made by the FCC will no doubt pave the way for even greater concentration of media ownership in the hands of a select few and deprive the public of the diversity of viewpoints that I happen to believe is so essential to democracy and objective reporting in America.

The FCC's June vote on media ownership ultimately, as I said in the committee, is truly the ''deregulatory'' express out of the station. Now we are on track toward even greater ownership concentration and unfettered consolidation.

Some have said that with exponentially more media outlets than ever before, we should have nothing to fear. While more mouths speaking is good, having more mouthpieces guarantees neither diversity of opinion nor information. The point is the amalgamation of control in media outlets. We cannot ignore the fact that diversity of discourse in America is an essential underpinning.

When it comes to changes allowing media mergers in over 150 markets representing 98 percent of the American population, and when reports show that 5 companies or fewer control about 60 percent of television households in just the next few years, we should all be very concerned.

I know some have said the process and the outcome of the FCC media ownership, as we heard from the FCC Commissioners before the Senate Commerce Committee, were preordained by the statutes and by the courts. The courts did not prescribe what the limits should be. Neither did they set a date certain. Rather, what they said was that whatever the limits are, there needs to be a solid factual record demonstrating that they are in the public interest.

How does one determine what is in the public interest? It is aggressively seeking the input of all stakeholders—not just simply notifying the public, notifying the Congress, and that simple disclosure is, in and of itself, sufficient. Absolutely not—not in this unprecedented realm of issues.

When we look at the record, what we find is that the FCC only held one public hearing. The committee urged them to conduct a series of public hearings across the country. But they only held one public hearing. Even with one public hearing, the FCC received an unprecedented amount of input from the public when it came to this issue. Even though they did not have the opportunity to participate in public hearings, they sent more than 700,000 e-mails, letters, and calls from across the country.

This is unprecedented in the history of the FCC.

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

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

I rise to speak in opposition to S.J. Res. 17. I had the opportunity to make a full statement last week. In my time as chairman of the Senate Commerce Committee, no issue has erupted so rapidly and evoked such passion from the public as media consolidation. These are critically important decisions.

If we could have a little straight talk this morning, if the Senate passes this resolution, there is no objective observer that believes the House will act accordingly. Now, the Senator from North Dakota may think it is important to have this Senate on record, and I don't disagree with that at all. Any prospects of it becoming a reality is minimal, at best. We should all recognize that.

Second, all kinds of allegations have crept in about various motivations on both sides of this issue. Some have been accused of wanting to return to the fairness doctrine. Some are saying it is because of ideological bias, dislike of talk radio, or dislike of the New

York Times acquiring more cable companies and media. I don't accept any of those arguments from both the right and left. There is legitimate basis for concern about continued consolidation of the media. This is not the appropriate vehicle for addressing that in 4 hours of debate and a blanket repudiation of regulations, some of which have been good, in my view, because they have reined in, at least to some degree, the continued consolidation in the most egregious and most incredible media consolidation, and that is radio in America today.

We have legislation passed through the Commerce Committee, S. 1046, which after being composed, marked up, amended, and debated in the Commerce Committee is on the calendar and ready for floor consideration. If we are serious about addressing this issue, we should do it by calling up from the calendar for debate and amendment S. 1046 and we can explore the myriad and complex aspects of this issue.

For example, the Appropriations Committee has now added, I am told, to their bill the 45-percent cap being rolled back to 35 percent. According to BusinessWeek magazine, the 45-percent cap has become a rallying symbol, but the regulations that would truly reorder America's media landscape and affect local communities have flown under the radar. These allow companies to snap up not only two to three local TV stations in a market but also a newspaper and up to eight radio stations.

If the courts and Congress are worried about the dangers of media consolidation, they will have to resist calling it a day after dispensing with the network cap and go after the rules with real bite. As it now stands, TV's big networks will be losers among media outlets, thanks mostly to vociferous lobbying by independent TV affiliates. With strong ties to lawmakers who depend on them for campaign coverage, the affiliates have succeeded in getting a House vote against the 45 percent and will likely see a rerun of that episode when the Senate votes by October.

With Fox and CBS already each owning stations that cover about 40 percent of the Nation's audience, going up another 5 percent is not going to make a dramatic difference. In contrast, opening the floodgates to allow local behemoths to combine newspapers, TV, and radio stations under one roof would change media ownership in towns and cities, concentrating it in the hands of a few. Even in midsized cities such as San Antonio, for instance, one company might own the leading newspaper, two TV stations, eight radio stations, and several cable channels.

What we are doing is interesting but if we are going to address this issue in a serious fashion, and there is reason for concern, we ought to do it in a fashion far different from this.

I point out that the CRA precludes an agency adopting similar rules without substantive congressional legislation. In other words, the FCC would be prevented, if this is passed, from acting on any rules regarding media consolidation. Almost all Members of this body have some degree of concern at least about some aspect of it.

I hope all of our colleagues had the opportunity to see the Wall Street Journal article on September 15 entitled: Show of Strength: How Media Giants Are Reassembling The Old Oligopoly; Mix of Broadcast and Cable Proves Lucrative in Making Deals.

Viacom and its big media peers have been snapping up cable channels because they are one of the few entertainment outlets generating strong revenue growth these days. More broadly, the media giants have discovered that owning both broadcast and cable outlets provides powerful new leverage over advertisers and cable- and satellite-TV operators. The golaiths are using this advantage to wring better fees out of the operators that carry their channels and are pressuring those operators into carrying new and untried channels. They're also finding ways to coordinate promotions across their different holdings.

Entertainment giants such as Viacom, NBC parent General Electric Co. and Walt Disney Co., which owns ABC, now reach more than 50 percent of the prime-time TV audience through their combined broadcast and cable outlets. The total rises to 80 percent if you include the parents of newer networks—such as New Corp.'s Fox and AOL Time Warner Inc.'s WB—and NBC's pending acquisition of Vivendi Universal SA's cable assets, estimates Tom Wolzein, an analyst at Sanford C. Bernstein & Co.

The big media companies are quietly re-creating the ''old programming oligopoly'' of the pre-cable era, notes Mr. Wolzein, a former executive at NBC. Of the top 25 cable channels, 20 are now owned by one of the big five media companies.

The idea of owning broadcast networks as well as cable channels is ''comfortable for people like ourselves,'' says Bob Wright, chairman of NBC, which two weeks ago signed a preliminary agreement to acquire Vivendi Universal's USA and Sci-Fi cable channels, along with the Universal film studio, bolstering a stable of cable channels that includes Bravo, MSNBC and CNBC. ''There has been so much consolidation'' among the distributors that ''unless you are equally big . . . you risk a situation where you can be marginalized,'' says Viacom President Karmazin.

Viacom president Karmazin is a man, who, by the way, I happen to admire enormously.

I am not blaming any of these people, executives or organizations, for seeking to gain as much market share as they can. But the reason I refer to this Wall Street Journal article is this is a complex set of issues. When we are talking about cable consolidation, cable rates, all of the other.

Since 1990, almost half of the top 50 cable channels have changed hands. Among the big deals: Disney's $19 billion acquisition of ESPN's parent, Capital Cites/ABC, and Time Warner's $6.7 billion purchase of CNN parent Turner Broadcasting, both negotiated in the summer of 1995. In 2001, Disney bought the Family Channel from News Corp. for $5.2 billion.

Last year, NBC bought Bravo for $1.3 billion. CBS, owner of The Nashville Network—now Spike TV—and Country Music Television, itself was gobbled up in 2000 by MTV's longtime parent, Viacom. Viacom has since added channels such as BET and Comedy Central.

Mr. Karmazin recently boasted to investors that the company's broadcast and cable outlets reach 26 percent of the Nation's viewers in prime time, a significantly bigger share than any other company. Having such a big market share is ''real important for lots of reasons, in terms of dealing with advertisers and our cable partners,'' he told investors.

There is something going on here that deserves investigation, not just a simple CRA vote and then move on. At the hearing before the Commerce Committee, all five FCC Commissioners agreed—all five, for one of the first times I have ever heard the FCC Commissioners agree to anything—the consolidation of radio that occurred in local markets has been excessive. While it received little credit amid the outcry against the regulations, the FCC attempted to address this problem by describing new market definitions designed to tighten the limits on logical radio ownership.

The resolution would have the perverse consequences of eliminating these efforts and prohibiting the FCC from adopting similar measures in the future, a move that surely will be applauded in the corporate offices of large radio station groups that hope to perpetuate their ability to benefit from existing loopholes.

Likewise, this resolution could have grave unintended consequences for other media ownership rules the Commission decided to leave unchanged.

For example, the FCC retained its limit on the number of local radio stations one entity may own and retained its rule prohibiting one entity from owning two of the four largest television networks. The decision to retain these rules will also be rejected if the resolution is enacted. If the FCC were to read this statute, as many have, as limiting its permissible actions in biennial review proceeding to exclusively deregulatory changes to its rules, the FCC may have no choice but to raise the number of stations that one entity is permitted to own in a local market or eliminate the dual rhetoric network rule. This cannot be the outcome intended by the sponsors of this resolution, though it is one that could conceivably result.

Finally, the use of the CRA in the present case will create a regulatory

void likely to be filled only by uncertainty about the status of the FCC's media ownership rules. As a result, all of the rules, even those that the proponents of the resolution favor, may be vulnerable to court action. The absence of an affirmative congressional directive will cast considerable doubt on the FCC's ability to enforce its previous rules given that one of the FCC's previous attempts to retain the rules was found by the DC Circuit to be arbitrary and capricious. Another was found not to have justified that the rules are necessary in the public interest. In both cases, the DC Circuit remanded the rules to the FCC and directed the agency to either articulate a justification for retaining the rules or modify them. The lack of an enforceable FCC order will leave these court orders unanswered, risking additional court action that relaxes the rules even further or even invalidates them entirely.

My point is that we have a very complex set of issues to address. I believe there is reason for concern about media consolidation, as the Senator from North Dakota has fairly overused the comment that there are many voices and one ventriloquist. At the same time this action would invalidate both good and bad, this action would make many believe that we have resolved the issue and moved on.

On the calendar is S. 1046, a bill that was properly considered and reported out by the Commerce Committee. That is the way we should be addressing this issue so that this issue can be fully ventilated and fully understood.

I reserve the remainder of my time.

Mr. BOND. Mr. President, I oppose the Dorgan Resolution, S. 17, which would block the entire Federal Communications Commission's ruling revising the rules on media ownership.

Since the FCC issued this ruling on June 2, 2003, a multitude of interest groups have proclaimed that this decision represents a serious blow to democracy in America as we know it. To say that this claim is a gross exaggeration is a huge understatement.

While I do not agree with every element of the FCC ruling, I must admit that I believe it would be short sighted to block the ruling entirely. I also think that every stakeholder who is concerned about this ruling should look at the facts that prompted the FCC to make this ruling. Furthermore, I believe it is imperative that one examine the actual facts in the ruling in order to dispel some of the myths that have surfaced with regard to it.

In its ruling, the FCC incrementally increased the national TV ownership limit from 35 percent to 45 percent. What this says is that one company can own TV stations reaching no more than 45 percent of U.S. TV households. It does not mean that one company can own up to 45 percent of all TV stations across the country. In addition, the ruling does not even say that a company can own stations whose programs reach 45 percent of the viewing public or market share.

For example, Newscorps, Fox, the second largest owner of stations currently owns 37 or 2.8 percent of the 1,340 commercial stations across the country. Under the new 45 percent cap set forth in the FCC ruling, Newscorps would be able to acquire, at best, another five stations nationwide. In light of this information and in light of the court mandates, the FCC action on this issue hardly represents a massive increase.

The FCC promulgated this increase in response to several court decisions striking down specific limits on the number of broadcast entities that one company may own. Since 1998, the FCC has lost five out of five cases that challenged its previous media ownership rules. According to the U.S. Court of Appeals for the District of Columbia, the Telecommunications Act of 1996 ''carries with it a presumption in favor of repealing or modifying the ownership rules (Fox v. FCC).''

In the Fox v. FCC decision, which was handed down in February 2002, the court ruled that the FCC's action—on broadcast ownership limits—was ''arbitrary and capricious and contrary to law'' because ''it failed to give an adequate reason for its decision'' to keep the 35 percent cap. In the same case, the court ruled that the commission ''provided no analysis on the state of competition in the television industry to justify its decision to retain the national cap.'' The court in its remanding decision ordered the FCC to rethink its rules on media ownership.

Another aspect of the FCC ruling involved the modification of the FCC's rules relating to newspaper/broadcast cross ownership and radio-television cross ownership. In its ruling, the FCC replaced these rules with a new set of cross media limits. It is important to understand that the FCC did not totally repeal the 28-year-old newspaper/broadcast ownership ban in all markets; it simply modified its rule with newer broadcast/cross ownership regulations to reflect the changing circumstances of today's diverse media marketplace.

Under the new FCC rules, in small markets with three or fewer TV stations the ban will continue to be enforced. In mid-sized markets, with 4 to 8 TV stations, limited cross ownership is allowed. In diverse and competitive markets with 9 or more TV stations, the ban is lifted entirely.

This is the major decision in the FCC ruling that I support, and it is the main reason that I cannot support the Dorgan resolution. Simply put, the previous rule supporting the cross ownership ban is outdated given the current diversity and multiple sources of news information in today's media marketplace.

When the broadcast/newspaper cross ownership provisions were adopted in 1975, the three television networks of the time held more than 90 percent of the viewing audience and only 17 percent of households subscribed to cable TV. However, due to the technological revolution of the past two decades, there has been a significant increase in the number of news and information sources with the widespread availability of cable TV, satellite and the internet as well as substantial increase in the number of radio and TV stations, magazines, and free weekly newspapers.

Yet, despite the availability of these new media sources, many groups are still objecting to this modest change in media cross ownership. They feel that this modification will drastically reduce the quality news and diversity of voices in the media. I believe there is strong evidence to refute this claim.

Unlike other ownership rules, the FCC has actual historical data on what the effect of relaxing this ban will have on the media market. That is because there are already 49 media cross ownership entities that were grandfathered prior to the implementation of this ban in 1975. Some of these cross ownership entities are in major markets such as New York, Chicago, Dallas, Atlanta, Phoenix, Tampa, and Milwaukee.

All of these existing cross ownership entities have had practically no adverse impact on competition. In the past 23 years, there has been no major court case, FCC, FTC, or Department of Justice, DOJ, action objecting to any of these grandfathered cross ownership media entities. Furthermore, the FCC informs me that no entity has ever challenged a license renewal of a TV station owned by a newspaper in the last 25 years. Two recent studies, one by the FCC and one by the Project for Excellence in Journalism, also found that co-owned newspaper/broadcast combinations provide higher quality and more news and informational programming than other broadcast stations.

In light of this evidence, I feel that the FCC's ruling on newspaper/broadcast cross ownership needs to be preserved, and therefore, I oppose the Dorgan resolution.

As stated previously, I do not agree with every aspect of the FCC ruling. I do not support the new method by which the FCC will utilize to define a local radio market. This new definition has resulted in many companies that own multiple radio stations exceeding the new station caps. While the FCC did grandfather all existing combinations to ensure that these radio companies would not be forced to divest stations that they legally acquired, it imposed harsh restrictions on the transferability or resale of these newly noncompliant radio station clusters.

Under the new market definition, those radio clusters that no longer comply with local radio market limits may only be sold intact to small businesses. If a ''small business buyer'' cannot be found, a cluster owner must break up his or her cluster and sell the stations individually. I believe that this strict resale provision unfairly penalizes certain radio broadcasters, who

acquired their stations in good faith under the previous ownership framework.

By narrowing the eligible market of buyers, this resale provision would prevent a radio cluster seller from receiving fair-market value on his or her investment. If most companies are prohibited from bidding on a cluster, the prices offered in these transactions will be considerably smaller than otherwise.

I also believe this resale provision will only make bigger radio conglomerates stronger because it will result in the immediate breakup of clusters that directly compete with these conglomerates.

I intend to petition the FCC for reconsideration of these new local radio rules set forth in the FCC order. However, I do not believe that the entire FCC order should be disapproved, and that is why I oppose the Dorgan resolution.

Ms. SNOWE. Mr. President, drastic times require drastic measures and that's why I stand with my colleagues today in support of S.J. Res. 17, disapproving the FCC's June 2 vote to relax, and in some cases eliminate, the rules that safeguard one of our Nation's most precious possessions, the right of free and diverse exchange of opinion. This decision will pave the way for even greater concentration of media ownership in the hands of a select few and deprive the public to the diversity of viewpoints that are so important to democracy and objective reporting in this country.

In response to the FCC's action, Senator DORGAN and I along with seven other colleagues sponsored S.J. Res. 17. This resolution would simply declare the FCC's June 2 rules on media ownership without force or effect and would leave in place the media ownership rules that existed prior to the Commission's decision.

With the FCC's June vote on media ownership, the ''deregulatory express'' is out of the station—and we are now on track toward even greater ownership concentration and unfettered consolidation. Now, some have said that, with exponentially more media outlets than ever before, we should have nothing to fear. But while more mouths speaking is good, having more mouthpieces guarantees neither diversity of information nor opinion. The point is the amalgamation of control in media outlets and its impact on content—especially with the overwhelming majority of Americans receiving their news from television and newspapers.

We cannot ignore that diversity of discourse in America is an essential underpinning of our society and our democracy. So when it comes to changes allowing media mergers in over 150 markets representing 98 percent of the American population—and when reports show that five companies or fewer could control about 60 percent of television households in just the next few years—we should all be very concerned.

I know that some have said, well, the process and the outcome of the FCC's media ownership review were essentially preordained by statute and the courts. But the courts never proscribed what the limits should be. Neither did they set a date certain by which the FCC must have concluded its process. What the court did say is that, whatever the limits are, there needs to be a solid factual record demonstrating they are in the public interest.

And what is the best way to determine public interest? It's to go above and beyond in notifying and providing full disclosure to the public and Congress, and aggressively soliciting input from all stakeholders—so the public can be confident the best possible decision has been reached. The FCC failed to do this. With more than 700,000 individuals and groups weighing in against the FCC's rule change, the Commission held only one public hearing on the subject of media ownership, I can't help but think there must be a better way.

Let me speak to the FCC's modification of the cross ownership ban, one of the more devastating changes made by the Commission on June 2. Many of us represent States that have communities with only one newspaper, under the new rules the FCC would allow that single remaining paper to be purchased by the dominant television broadcaster in the area. In the context of other FCC rules, the agency recognized that it is bad for local competition to allow 2 of the top 4 broadcast outlets to be consolidated, but in this context, the FCC is allowing the top TV station to buy the top newspaper in almost every media market in the country. Newspapers are one of the most important sources of independent reporting. When the leading TV station gobbles up the paper, what happens to the other TV broadcasters in the market? They simply can't compete at the same level. It seems apparent that the remaining TV stations do less news, or they move to softer news formats. This isn't good for news, this isn't good for democracy.

If the FCC had acted to create more voices—perhaps by requiring those broadcasters who want a television-newspaper combination to start a new newspaper rather than just buying one—I could see the wisdom in their decision. Instead, the FCC has acted to reduce the total number of voices in communities all across the country. Some say that the FCC's decision will allow these newspaper/broadcast combinations in over 190 media markets, covering 98 percent of America's population. Since the newspaper/broadcast rule was put in place in 1975, we have already lost two-thirds of our independent newspaper owners. Let me reiterate that: two-thirds of our independent newspaper owners have disappeared since 1975. And somehow we're going to make democracy better by further reducing the number of independent newspaper owners by allowing broadcaster television owners to buy them—it just doesn't make sense.

The issue of media ownership goes to the heart of our democracy and the crux of the way in which we form our opinions on other issues of critical importance. We need to be extremely careful that in deregulation we don't undermine diversity in the marketplace of ideas and information. I look forward to continuing my work in this area and urge the public to keep the pressure on Congress to undo the damage unleashed by the FCC on June 2. I ask that my colleagues support S.J. Res. 17.

Mr. HATCH. Mr. President. I rise to outline my concerns about Senator DORGAN's resolution to disapprove the Federal Communications Commission's June 2, 2003 decision to relax the broadcast media ownership rules.

The FCC's decision to increase the proportion of market share broadcasters may own in any given market from 35 percent to 45 percent and to give newspaper owners the ability to own radio stations and vice versa has raised significant questions relating to the proper scope of regulation and protection of our fundamental First Amendment values.

As a procedural matter, I am concerned about the Senate acting on the Dorgan resolution given the pending court proceedings reviewing the FCC's rule modifications. On September 3, 2003, in Prometheus Radio Project v. Federal Communications Commission, the Third Circuit Court of Appeals stayed the effective date of the FCC's new rules, pending resolution of the appeal on the merits. No. 03–3388, 2003 U.S. App. LEXIS 18390. Given the procedural status of the FCC's rules, it is premature for the Senate to act on the Dorgan resolution. A more prudent course for the Senate is to await the Court of Appeals decision, review it carefully, and then determine what action, if any, is warranted.

With respect to the substance of the FCC's rule modifications, I want to reiterate my strong support of the bedrock principles underlying the FCC's regulation of our Nation's media: diversity of viewpoints; localism; and competition. I have been—and remain—committed to these principles, particularly with respect to examining critical regulatory and enforcement issues surrounding increased concentration of our Nation's media outlets. We must preserve our fundamental First Amendment values by protecting our marketplace of ideas—that is, freedom of expression and diversity of viewpoints.

When it comes to ensuring competition and diversity in our media markets, I have not—and will not—analyze the issue by blindly condemning all merger consolidations. To me, ''big'' is not necessarily bad. Rather, the issue of media consolidation requires a careful weighing of our Nation's interest in promoting competition and diversity.

In my view, such an analysis requires careful examination of the potential

for anti-competitive conduct, rather than adherence to inflexible regulatory restrictions or hard and fast enforcement rules. Market forces—not Federal across-the-board regulations—will ensure that consumers benefit from a merger or consolidation in the media industry.

Like many of my Senate colleagues, I am concerned about the health and well-being of the small and mid-sized media companies in our nation. In the State of Utah, we have many excellent small and mid-sized media companies who provide a great service to all Utahns. To this end, traditional antitrust enforcement can more effectively and efficiently protect competition and enhance diversity than regulatory one-size-fits-all approaches. I believe appropriate enforcement of our nation's antitrust laws will provide greater protection to small and mid-sized media owners than any arbitrary FCC rules.

In light of all of these considerations, I urge my colleagues to vote against the Dorgan resolution. Given the significant interest in the issue here in the Senate, we should monitor the court proceedings reviewing the FCC rule. Once the Court has acted, we should then determine what appropriate steps, if any, are needed to preserve and protect our bedrock First Amendment principles of media ownership: diversity, local programming and competition.

Mrs. FEINSTEIN. Mr. President, I rise in support of the Dorgan resolution, and in the hope that the FCC will take a careful, second look at the changes it made to media ownership rules.

Not everything the FCC did was something I would oppose. For instance, I support what the FCC did in terms of allowing companies to own a combination of television, radio, and newspapers in the largest of media markets, like Los Angeles, Chicago, New York or San Francisco.

But on the whole, the new FCC rules raise some very real concerns that one or two national companies may begin to dominate too much of the news and other content delivered to American homes.

The American experiment has been one of free press, diversity of voices, fair competition, and the ability to hear, and to be heard. That experiment, in my opinion, has been a resounding success.

Of course, the world has changed, and will continue to do so. As a result, it is sensible for our regulatory agencies to revisit outdated rules and modify them to better suit changing technologies and the changing realities of a more crowded, more advanced nation.

Nevertheless, it is possible to go too far in trying to address these changing realities, and I believe that the FCC has gone too far in crafting some of these new media ownership rules. For instance, in allowing a broadcast network to own and operate local broadcast stations that reach, in total, up to forty-five percent of U.S. television households, instead of thirty-five percent under the old rules, the FCC has opened the door to vast conglomerates of news stations all feeding the same content to almost half the people in the country.

We don't know how or even whether this would happen, but the potential for eliminating local content and reducing the diversity of opinions presented on television is simply too great.

Likewise, the cross-ownership rules—the rules that determine whether a company can own both television and newspapers in the same market, or television and radio, and so on—raise some concerns for markets with just four of five television stations.

In those small- to medium-sized markets, with between four and eight television stations, combinations are limited to one of the following:

One daily newspaper, one television station, and up to half of the radio station limit under the local radio ownership rule for that market; one daily newspaper, and up to the radio station limit under the local radio ownership rule for that market, but no television stations; or two television stations, if permissible under the local television ownership rule, and up to the radio station limit under the local radio ownership rule for that market, but no daily newspapers.

The old rule prohibited common ownership of a full-service broadcast station and a daily newspaper within the same city. In fact, according to the Congressional Research Service, when it adopted the rule in 1975, the commission not only prohibited future combinations between newspapers and broadcast stations, but also required existing combinations in highly concentrated markets to divest holdings to come into compliance within 5 years. But under this new rule, one company could own the largest television station in town, the only newspaper, and half the radio stations. It is easy to see how, in these mid-sized markets, the amount of diverse content would rapidly diminish.

On the other hand, I am not as concerned with the new rules pertaining to larger markets like Los Angeles. In a market with more than two dozen television stations and countless radio stations and newspapers, it is far less likely that one or two companies could come to control enough of the media market to truly stifle diversity of opinion or competition among content sources.

So it is my hope that the FCC will go back and reexamine these new rules, keeping in mind the concerns of Congress and the American people, who have spoken out loud and clear about this issue. Fix what needs to be fixed, keep what is not broken. But come up with a new set of rules that makes sense for all Americans.

Mr. LEVIN. Mr. President, I have long been concerned about the implications of too much media concentration. During the Senate consideration of the 1996 Telecommunications Act, I voted for an amendment authored by Senator DORGAN to keep the Television National Broadcast Cap at 25 percent of television households that a broadcast company could reach through its local broadcast stations. I opposed increasing the cap to 35 percent as the 1996 bill allowed.

In June the Federal Communications Commission, FCC, voted to adopt an order to relax current media ownership rules. I am a cosponsor of S.J. Res. 17, authored by Senator DORGAN, being considered by the Senate today to disapprove of the FCC ruling to lift media ownership restrictions. Loosening current media concentration restrictions would allow the media to become less responsive to local concerns and less likely to represent broad and diverse viewpoints. This is not in the public interest and should not be allowed.

Today Members of the Senate can oppose these detrimental rule changes that will result in greater media concentration and less consumer choice by voting to disapprove them under the Congressional Review Act.

I have supported the congressional review of rules dating back even before I came to the Senate. And I am proud and pleased that we have the opportunity to use it to stop this FCC rule today. This is exactly the situation in which the legislative review process is not only useful but necessary.

When I first ran for the Senate in 1978, legislative review was actually a part of my platform. With all of the power executive agencies have we need to have a mechanism by where the politically accountable—that is the elected officials—can have a direct say in the rules and regulations issued by Executive Branch agencies. These agencies are supposed to be carrying out the will of Congress, and we have not only the right, but the responsibility to oversee their actions.

I joined forces in the late 1970's and early 1980's with then Congressman Elliott Levitas in the House. In fact, along with Senator David Boren of Oklahoma, we got the legislative veto passed. But that law was held unconstitutional by the courts in the Chadha case because it allowed for a one house veto. The court ruled that legislation subject to the President's veto power is necessary to avoid violating the principle of separation of powers.

We then fought to establish a congressional review process. It was with the bipartisan effort of Senators HARRY REID and DON NICKLES almost 10 years ago, that we finally got legislative review enacted into law and I was proud to be part of that effort.

And I'm glad to see that what many of us argued decades ago in support of this review process has proven to be true. This congressional review process is a two-edged sword. Some opponents argued it would be used only to limit

valuable social programs, but we proponents argued that it was neutral politically—that it could be just as useful to protect against an agency that is regulating too little as it could be to rein in an agency that is regulating too much, or as with the case of the FCC, regulating unwisely.

Ms. CANTWELL. Mr. President, earlier this year, the Federal Communications Commission, FCC, issued rules making changes to long-standing limits on the types and amounts of media outlets that can be owned and controlled by a single company. These rule changes drastically increase the ability of a few companies to control access to information in this country. The rule changes undermine the public interest and do nothing to ensure diversity of viewpoints, ''localism,'' coverage of events in local communities by people who are a part of that community, or to ensure that healthy competition exists amongst media outlets.

The American people know these changes are not in the public interest, and that is why I have heard directly from more than 1,650 of my constituents urging Congress to overturn the FCC's actions.

Specifically, the rule changes adopted by the FCC earlier this year would allow a single company to control television stations with access to almost half of the American broadcast audience. How that can be billed as increasing competition or diversity of viewpoint is a mystery. Given that these rules were written with only one public hearing and without opportunity for public comment, it is not surprising that they fail to reflect the public interest.

It is important to recognize that overturning these rules is not just about preventing additional domination of the airwaves. It is about ensuring the survival of local newspapers that genuinely know and are a part of the community.

The rule changes would allow the sole or dominant newspaper in a city to merge with the top broadcaster in 200 of the 210 media markets in the country! That would mean 98 percent of the American public could effectively lose an independent voice in their community. Already, since 1975, two thirds of independent newspaper owners have ceased to exist, leaving only 290 independent newspapers in a country of 292 million people.

If these rules are allowed to take effect, it will mean fewer reporters on the ground chasing stories in our local communities, and less local investigative journalism. It would make it possible for individual markets to be dominated by a single newspaper/TV conglomerate which could control well over half the news audience and two-thirds of the reporters in a given local market.

Inevitably, the merging of broadcasters and newspapers reduces the number of voices in individual markets and threatens to place too much control over local news and information in the hands of too few companies. Repackaging and repeating stories produced in other venues is not the same as real reporting of local news.

One of the most common refrains that we hear to justify this tremendous change is that new outlets for news and information are now available. While I firmly believe that we are only at the cusp of an information age that will drastically change how we receive information, it makes no difference if the new access points are controlled by fewer people.

The reaction to these rules has been quick and sure. I have heard from over 1,650 of my constituents directly, an additional 10,000 through the Move On petition. The House and the Senate Appropriations Committee have taken action to reverse the increase in the cap on broadcast audience in the appropriations process, and the Third Circuit Court of Appeals has temporarily halted implementation of these rules. But the clearest way to send a message to the FCC that these rules cannot stand is to pass this resolution disapproving the rule changes. We expect the FCC to be a watchdog not a lapdog.

I urge my colleagues to vote for this resolution as a first step in reinvigorating competition and preserving local control in mass media.

Mrs. BOXER. Mr. President, I rise to support the Senate resolution to overturn the Federal Communications Commission's, FCC, decision to relax our Nation's media concentration rules. That decision threatens our democracy by placing more power over what we see and hear in the hands of fewer big interests.

The voices of those who oppose the FCC decision range from Bill Clinton to Bill Safire, from the National Rifle Association to the National Organization for Women. I am particularly disappointed with the manner in which the agency has ignored these voices. The FCC held only one public hearing on these rules. But commissioners and their staff met with just one firm lobbying on behalf of big media more than 30 times.

The agency received more than 700,000 letters opposing the relaxation of the rules and only a handful supporting that decision but failed to take that overwhelming public sentiment into consideration. I reject the FCC rule because the FCC ignored the people's concerns.

Congress must send the agency a clear bipartisan message—the airwaves belong to the American people, not to you and not to a small group of media elites. The FCC must be forced to address the concerns of the American people. The people know that the FCC decision to relax our media ownership threatens democratic discourse and participation. It will allow massive media giants to grow—media giants that already use multiple media outlets to promote their views and overwhelmingly dominate public debate.

The courts told the FCC to explain why the rules were justified. With the more than 700,000 public comments opposing relaxation of the rules, the agency had that justification. The American people understand that it cannot be in the public interest to further relax the rules that protect the public's access to multiple sources to information and media. My office alone has received 4600 letters and e-mails on the issue.

The FCC is charged with protecting the public interest. In this case, I believe the commission has failed and Congress must act.

Mr. BUNNING. Mr. President, in June, the Federal Communications Commission, FCC, issued an order that modified its media ownership rules in accordance with the 1996 Telecommunications Act. The modified rules increased from 35 percent to 45 percent of households the cap governing broadcast network ownership. The new rules also make easier newspaper-broadcast cross ownership by largely lifting the ban prohibiting a newspaper from buying a TV or radio station in the same market.

S. J. Res. 17 would overturn all aspects of the FCC ruling. I do not believe the FCC ruling is without flaw, but a blanket negation of the rulemaking is not an appropriate response. Though I am not in favor of the increased cap governing broadcast network ownership, I do support the modified newspaper-broadcast cross ownership rule. I believe the relaxed cross ownership ruling encourages a concordant relationship between newspapers and television stations that will offer a higher standard of quality in news content and reporting. This, in turn, reaps innumerable benefits for communities across America. As I believe the value of the modified cross ownership ruling usurps the potential dangers of the increased cap governing broadcast network ownership, I cannot support S. J. Res. 17.

To unequivocally vacate all aspects of the FCC ruling is to do a disservice to incalculable citizens across this country who will benefit from the modified newspaper-broadcast cross ownership rule. For the aforementioned reasons, I am voting ''no'' on S. J. Res. 17.

Mr. KENNEDY. Mr. President. In a strong democracy, a variety of views must be available to citizens. Protections are essential so that minority views can be heard. That was the vision of America's founders when they drafted the First Amendment to the Constitution, and it has served the Nation well. Its principles are especially important today. Neither the broadcast industry nor anyone else is entitled to a monopoly over the dissemination of information in our society.

The presence of a diversity of voices, each contributing to our national discourse, is essential for the functioning of our democratic society. And the best way to foster that diversity is through competition.

Today, however, an increasingly serious problem is being caused by the buyouts of local broadcast stations by national media conglomerates. Competition suffers, and local issues of great importance to individual communities often go unheard.

Many of us in Congress are deeply concerned that the remaining diversity of our media will be further be reduced by the Federal Communications Commission's recent decision to weaken media ownership rules. The new rules allow even greater media concentration, in spite of its adverse effect on competition, the diversity of views, and major national, State, and local priorities.

I support Senator DORGAN's proposal to reject these rules, because they are not in the public interest, and would seriously weaken the protections in current law that prevent excessive concentration in the broadcast industry. The public has little to gain and a great deal to lose if we allow the FCC to slash the protections that serve them so well.

Each weakening of restrictions on media ownership in recent years has been followed by a burst of new corporate consolidation. Mergers have sharply reduced the number of media companies and threaten to erode the diversity and competition that are so important to our Nation. The new rules will greatly increase this problem, by allowing fewer firms to control the flow of information—locally or nationally. It makes no sense for Congress to allow restrictions on the flow of information that is so important to our democracy in this information age.

As a trustee of the Nation's public airwaves, the FCC has a responsibility to include the American public in its decision-making process. Yet the commission has largely ignored public comment and debate before it these sweeping changes in the nation's broadcasting rules.

The commission agreed to one public hearing on the overall issue, and it refused to publicly disclose the rules before they were voted on. Such secrecy is unacceptable. What possible harm can come from public disclosure? The commission's ''notice and comment'' procedure is intended to allow an informed debate about these important issues of public policy, but in this case the agency used its procedures to keep the public in the dark.

Even with incomplete information, the public reaction against the proposed changes has been unique in the history of the FCC. The commission received nearly three quarters of a million comments, and over 99.9 percent of them opposed the increase in media consolidation.

As a result, a wide variety of organizations—including civil rights groups, churches, family values groups, and labor unions—have called on the FCC to reconsider the proposal. The National Rifle Association, the National Organization for Women, and many others expressed grave doubt about the wisdom of allowing greater consolidation. Nevertheless, the FCC approved the new rules.

I urge my colleagues to send a clear message today to the commission and the public by nullifying these rules and reversing this misguided decision the commission to support the interest of media conglomerates and ignore the public interest.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. KERRY. Mr. President, today the Senate will vote on a joint resolution, of which I am a proud cosponsor, to disapprove the Federal Communications Commission's June 2, 2003, rules designed to loosen restrictions on broadcast media ownership. It is the Commission's responsibility to ensure that media ownership rules serve our national goals of diversity, competition and localism. Unfortunately, the Commission's June 2, 2003, ruling fails to meet this standard.

The resolution before us today would reverse the FCC's decision to change the national television ownership cap from 35 percent to 45 percent, a decision that threatens local and independent voices in television. The television industry is undergoing rapid consolidation as a handful of national networks have acquired local stations across the country. I am concerned that when local stations are purchased by a national network, independent voices are lost in the media marketplace. Locally owned and operated stations are more likely to be responsive to local needs, interests and values than those stations owned and operated by national networks. Indeed many local stations are small businesses that drive innovative competition. A system of concentrated station ownership will trend toward nationalized programming aimed primarily at maximizing revenue with less concern for local interests and less room for competition.

The resolution before us today will also reverse the FCC's decision to significantly loosen restrictions on cross-ownership of broadcast stations and newspapers within single markets. The cross-ownership rule is intended to increase or at least maintain the number of independent editorial voices in a community. This is especially important in smaller communities where citizens have fewer media operations covering local matters. While there is scant evidence that weakening this rule will result in significant economic benefit, leading academics and media experts have argued that doing so will dangerously reduce the venues for independent public discourse.

I am also concerned with the process by which the FCC conducted these proceedings. This media ownership rulemaking is among the most important the FCC has undertaken, and it has garnered unprecedented public interest. Despite this, the Commission moved forward with dramatic rule changes without first taking public comment on a specific proposal. The Commission's outreach was simply insufficient. All parties concerned would have been better served if the Commission published a specific proposal and then allowed for a period of public comment before promulgating any rule changes.

The Commission's first responsibility is to ensure diversity, competition and localism. The Commission has no responsibility to facilitate the business plans of the major networks or any other narrow economic interest. I strongly support the disapproval resolution before us today.●

Mr. LEAHY. Mr. President, the Federal Communications Commission's rules pertaining to media ownership have long served a vital function, helping to ensure a diversity of viewpoints in the media marketplace. The FCC's attempt to undo these important rules that have served us so well is misguided and harmful. The FCC's 35 percent cap on national audience reach has not only served to promote diversity, it also protects local programming, allowing it to reflect local values and preferences. If the cap is increased to 45 percent we can be sure that major networks will meet or exceed the new threshold, as some companies have done under the current standards, allowing for the acquisition of local stations while eliminating the unique choices that local programming can provide.

I am also concerned about the FCC's effort to remove the newspaper/broadcast cross-ownership limitations in 80 percent of all media markets. Currently, cross-ownership rules prevent a single corporation from becoming too powerful a voice in a given community. Lifting the cross-ownership ban will leave many communities reliant on one company to decide what they are able to see and hear.

There are those who argue that the increase in the number of media outlets has obviated the need for such rules. The reality, of course, debunks this notion. While the number of media outlets has increased, ownership has become more concentrated. What's more, many of the largest new media outlets appear to be owned and controlled by the same conglomerates that control traditional media.

In light of these facts, it seems illogical that the FCC would exacerbate a disturbing trend that is transforming the marketplace of ideas into little more than a corporate superstore. A recent, troubling tendency of the large media companies was highlighted in The Wall Street Journal this week in an article noting these companies' rapid acquisitions of cable channels to ''re-create the old programming oligopoly'' of the pre-cable era. The numbers tell the story. Of the top 25 cable channels, 20 are now owned by one of the big five media companies, according to The Wall Street Journal article of September 15, 2003.

The unsettling statistics extend to other communications branches as well. According to the Economic Policy Institute, the number of owners of commercial radio stations has declined by approximately 25 percent since 1996. Even more alarming is the fact that since 1995, ''the number of entities owning commercial TV stations has dropped by 40 percent.''

I welcome and strongly encourage the emergence and proliferation of new and different platforms for news and information. We can expect that more and more Americans will gain access to and will use these resources. In our democratic society, there still are good and sound reasons for encouraging and protecting the diversity of viewpoints available in more traditional media. The FCC—to which the American people have entrusted some of this responsibility—should be working to diversify, not homogenize, the news and information media available to the American public.

I ask the Wall Street Journal article of September 15, 2003, be printed in the RECORD.

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

[From the Wall Street Journal, Sept. 15, 2003]

HOW MEDIA GIANTS ARE REASSEMBLING THE OLD OLIGOPOLY

(By Martin Peers)

Two years ago, Mattel Inc. gave CBS a choice. The network had refused to broadcast the toymaker's movie ''Barbie in the Nutcracker'' in prime time. So Mattel threatened to pull millions of dollars of advertising from the Nickelodeon cable channel—owned by CBS parent Viacom Inc.

Viacom, which had spent a decade bulking up with acquisitions, now wielded its new clout, according to people familiar with the situation. If Mattel made good on its threat, Viacom said, it would be blacklisted from advertising on any Viacom property—a wide swath of media turf that also includes MTV, VH–1, BET, a radio broadcasting empire and even billboards. Mattel backed down, and the Barbie movie ended up running during a less-desirable daytime period.

Neither company will comment on the scrape, but Viacom says Mattel remains a ''valued advertising partner.'' More generally, President Mel Karmazin in an interview is blunt about his company's strategy: ''You find it very difficult to go to war with one piece of Viacom without going to war with all of Viacom.''

Viacom and its big media peers have been snapping up cable channels because they're one of the few entertainment outlets generating strong revenue growth these days. More broadly, the media giants have discovered that owning both broadcast and cable outlets provides powerful new leverage over advertisers and cable and satellite-TV operators. The goliaths are using this advantage to wring better fees out of the operators that carry their channels and are pressuring those operators into carrying new and untried channels. They're also finding ways to coordinate promotions across their different holdings.

Entertainment giants such as Viacom, NBC parent General Electric Co. and Walt Disney Co., which owns ABC, now reach more than 50% of the prime-time TV audience through their combined broadcast and cable outlets. The total rises to 80% if you include the parents of newer networks—such as News Corp.'s Fox and AOL Time Warner Inc.'s WB—and NBC's pending acquisition of Vivendi Universal SA's cable assets, estimates Tom Wolzien, an analyst at Sanford C. Bernstein & Co.

The big media companies are quietly recreating the ''old programming oligopoly'' of the pre-cable era, notes Mr. Wolzien, a former executive at NBC. Of the top 25 cable channels, 20 are now owned by one of the big five media companies.

The idea of owning broadcast networks as well as cable channels is ''comfortable for people like ourselves,'' says Bob Wright, chairman of NBC, which two weeks ago signed a preliminary agreement to acquire Vivendi Universal's USA and Sci Fi cable channels, along with the Universal film studio, bolstering a stable of cable channels that includes Bravo, MSNBC and CNBC.

For the past several years, Viacom and other media companies have pressed the Federal Communications Commission to relax restriction on owning local TV station. One of their main arguments: Their audience is shrinking as cable booms and the TV audience fragments. The original three broadcast networks now capture only 33.7% of the prime-time television audience, down from 69.3% in 1985–86. Cable now boasts a 49.3% share, compared with 7.5% in the mid-'80s, according to a Cabletelevision Advertising Bureau analysis of data from Nielsen Media Research.

But with the wave of consolidation and the increased reach of the media giants, some cable systems are fighting to keep restrictions on TV-station ownership in place. Cox Enterprises, parent of the fourth-biggest cable operator, Cox Communications, has argued that the big broadcasters are abusing protections granted them under federal law. The broadcasters, Cox argues, are using those protections to charge cable systems more for their cable channels. Cox and others have complained to the FCC that media companies make them accept less-popular cable channels in exchange for carrying their broadcast networks.

Media companies counter that their consolidation only puts them on a level playing field with cable operators, who are themselves merging into giants. Comcast Corp.'s acquisition of AT&T Corp.'s cable division last year gave it a reach of more than 21 million homes, for instance, almost 30% of homes served by cable. Comcast has already begun to tell cable channels it wants to save money on what it pays for programming, setting the scene for increasingly contentious negotiations with big media companies.

''There has been so much consolidation'' among the distributors that ''unless you are equally big . . . you risk a situation where you can be marginalized,'' says Viacom President Karmazin.

FOLLOWING THE MONEY

In buying up cable channels, the media conglomerates are simply following the money. The music business is shrinking rapidly as piracy eats into sales. Universal Music Group, the world's biggest, is now thought to be valued at $5 billion to $6 billion, less than half what it was a few years ago. The film business is volatile, with a quarter's performance dependent on whether movies bomb or not. The publishing business is steady but grows at a slow pace. Broadcast television's audience is shrinking, and its business model is entirely dependent on advertising revenue, a cyclical business.

Cable channels are gushing cash because they generate revenue from two sources—subscriptions and advertising. The subscriptions don't come directly from customers, but through cable-TV services, which operate the vast array of wires and pipelines connected to homes, and through satellite-TV services that beam the signal. For the right to carry the programming on their systems, these cable-operating companies pay a range of monthly fees, from 26 cents a subscriber for VH–1 to more than $2 for ESPN. These fees, for the most part, increase every year, providing a steadily rising annuity for the channel owners.

As cable viewership has increased, so has advertising. Since 1980, cable-channel ad revenue has risen from practically nothing to $10.8 billion in 2002, according to the Cabletelevision Advertising Bureau. Some channels, meanwhile, are cashing in on strong brand names. Nickelodeon, for one, is a merchandising powerhouse, with products including Dora the Explorer backpacks and SpongeBob SquarePants videogames.

The result has been an explosion in profits. MTV earned just $54 million in 1989, estimates Kagan World Media, but is expected to make more than 10 times that much this year. QVC, the home shopping channel, generates so much money that Liberty Media recently agreed to buy full ownership of the channel at a value of about $14 billion—the same value put on all of Vivendi Universal's film and TV assets.

Cable channels' surging profits have transformed the bottom lines of their parent companies. E.W. Scripps Co., the 125-year-old Cincinnati newspaper publisher and TV-station owner, now relies on its cable division for much of its profit growth. In 1994, Scripps launched the Home and Garden channel on the initiative of a TV executive, Ken Lowe, amid widespread skepticism. One Scripps newspaper publisher approached Mr. Lowe at the time to complain ''a lot of the cash that I'm making here is being shipped to you . . . You better know what you're doing,'' Mr. Lowe recalls.

Nine years later, HGTV has become one of the most popular cable channels with shows such as ''Design on a Dime'' and ''House Hunters.'' Scripps added a controlling stake to the Food Network in 1997. In the second quarter of this year, the impact of cable channels, including the Home and Garden channel and the Food Network, was clear; Newspaper and broadcast-TV profits both fell, while cable-channel profit jumped 70%, helping Scripps's net profit more than double. Scripps stock is trading near its 52-week high of $90.65, up almost 30% for the past 12 months.

The publisher who had complained about the cable-channel investment recently thanked Mr. Lowe, now Scripps's CEO, noting that the rise in Scripps's stock price would put his three children through college, Mr. Lowe says.

Since 1990, almost half of the top 50 cable channels have changed hands. Among the big deals: Disney's $19 billion acquisition of ESPN's parent, Capital Cities/ABC, and Time Warner's $6.7 billion purchase of CNN parent Turner Broadcasting, both negotiated in the summer of 1995. In 2001, Disney bought the Family channel from News Corp. for $5.2 billion.

Last year, NBC bought Bravo for $1.3 billion, CBS, owner of the Nashville Network (now Spike TV) and Country Music Television, itself was gobbled up in 2000 by MTV's longtime parent, Viacom. Viacom has since added channels such as BET and Comedy Central.

Mr. Karmazin recently boasted to investors that the company's broadcast and cable outlets reach 26% of the nation's viewers in prime time, a significantly bigger share than any other company. Having such a big market share is ''real important for lots of reasons, in terms of dealing with advertisers and our cable partners,'' he told investors.

Ad sales and marketing executives from the CBS and MTV Networks divisions meet regularly to share information and plot cross-promotional opportunities. In January 2001, MTV staged the halftime show for the Super Bowl, which was broadcast on CBS, featuring performances from Aerosmith and Britney Spears.

Last fall, CBS helped stem a slide in young women viewers of its reality blockbuster series ''Survivor'' with a documentary on the series that ran repeatedly on MTV before the new season of Survivor premiered. The premiere episode of ''Survivor'' on CBS saw a 25% jump in its young female audience, says George Schweitzer, executive vice president of marketing for CBS. CBS promoted its sitcom ''King of Queens'' through a special last Friday on Viacom's Comedy Central cable channel.

PROTECTING ONE ANOTHER

The broadcast and cable sides of Viacom generally don't try to sell ads jointly, but the common ownership allows them to protect each other's flanks. At a presentation to advertisers last spring, MTV executives compared the audience reach for most of MTV Networks with ABC, NBC, Fox and WB—but CBS's figures weren't included in the breakdown, so that MTV didn't siphon ads from its corporate cousin.

Meanwhile, Disney's ownership of both ABC and ESPN allows it to spread out the cost of expensive sports packages such as its deals with the National Football League and the National Basketball Association. ABC Sports is, in fact, overseen by the same executive who runs ESPN, George Bodenheimer, and the two operations regularly promote each other's programming and share talent.

Joint ownership of cable and broadcast is particularly valuable in negotiations with cable operators. A 1992 law allows broadcasters to regularly renegotiate the price for carrying TV stations' signal on cable. While broadcasters could charge a cash fee, they usually offer the broadcast stations free in exchange for carrying a new cable channel they've launched. Few viewers would subscribe to cable if ABC, CBS or NBC weren't on the channel line-up, so the cable operators have little leverage.

The strategy lets broadcasters add more cable channels, including many narrowly focused networks. Since 1993, big media companies have launched at least 35 new cable channels by bartering the right to carry their broadcast stations, estimates George Callard, an attorney with Cinnamon Mueller, a law firm that is counsel to the American Cable Association.

Using such a strategy, cable operators say, Disney has shoehorned its Soapnet cable channel, which features reruns of soaps such as ''General Hospital,'' into services reaching 33 million homes. Disney argues that fewer than half of those homes have the channel as a result of a barter arrangement.

Cox Enterprises complained in a filing with the FCC in January that Cox Communications has to agree to carry Soapnet nationally in exchange for the right to offer ABC stations in just a few of its markets. A Disney spokesman says Cox is a ''savvy negotiator'' that ''wouldn't have signed the deal unless they found value in it.''

Catalina Cable, a cable-TV operator on Catalina Island off the California coast, has only 1,449 customers. Ralph Morrow, Catalina's owner, says he was asked to carry Soapnet when he tried to renew his right to carry a Disney ABC affiliate for the beginning of 2000. He says he suggested paying cash for ABC instead. Disney's response was that the cash fee for ABC would be ''really high,'' he says. ''They made it clear to me'' that he didn't have that option ''at a reasonable price.'' A Disney spokesman says Mr. Morrow mischaracterized its offer, noting that Disney offers operators ''multiple options, including a stand-alone cash offer which we believe to be a fair offer and fair value.''

Mr. Morrow, who says he doesn't see the need for a soap-opera channel, now pays Disney 11 cents a subscriber for Soapnet. Disney responds that surveys of viewers have shown Soapnet to be popular. The channel drew 97,000 viewers in July and August, according to Nielsen. In the same period, HGTV—which is available in about two and a half times as many homes—averaged 457,000 viewers.

Mr. BURNS. Mr. President, I rise today in opposition to the resolution. I say this as someone who is unhappy with the core aspects of the FCC's ruling. I disagree with the move to lift the 35 percent national television viewership cap. I believe the 35 percent ceiling has served us well in preserving the goals of competition, localism, and diversity.

However, the decision was extremely comprehensive and complicated and included some changes which I do favor. For example, I strongly support the Commission's approach to ease the ill-advised restrictions on newspaper-broadcast cross-ownership. The empirical data from the newspaper/broadcast station combinations that were grandfathered in shows that this has allowed for a greater diversity of voices.

Miles City in my home State of Montana provides a vivid example. KATL–AM and the Miles City Star are one such operation. Each operates autonomously and KATL provides valuable local news coverage to the area. Through the pooling of resources, smaller stations which might not be viable are able to maintain their economic health and continue to serve the local community.

Again, I reiterate my strong opposition to the FCC's decision to lift the national broadcast ownership cap to 45 percent from 35 percent. If the major networks are allowed to own even more of their affiliate stations, local concerns will have less of a role in shaping what programming makes it on the air.

Affiliate stations that are independently owned may choose, from time to time, to preempt network programming that they believe does not conform to the mores of their local communities. That is localism. I guarantee that the local views of the citizens of Butte, MT differ from those of the citizens in New York City. Independently owned stations are answerable only to local demands. So, if the station owners feel certain programming doesn't reflect their local community values, they keep it off the air.

Not only will lifting the cap mean that stations are less likely to preempt programming, but it also means that there will be less local input into the composition of network schedules. As the networks own more and more of their affiliates, the independently owned affiliates will lose negotiating leverage. In short, you'll see programming decisions made more and more in Los Angeles and New York, instead of in local markets.

We already raised the national television cap in 1996 from 25 percent to 35 percent. It would be premature to raise it again so soon.

I fully understand the sentiment that lead to this resolution. I agree with the concerns of many of my colleagues, particularly on the television cap. However, this is not the way to go about it.

The Commerce Committee upon which I serve—has moved to protect the national broadcast cap. I also serve on the Appropriations Committee and the Commerce, Justice, State bill for this year includes a measure to protect the 35 percent cap. I support these moves, which target individual rule changes, rather than the resolution being considered today, which rolls back the entire decision.

Again, I emphasize I am not happy with the FCC ruling. But I don't think the answer is to wipe out every aspect of the FCC ruling with one single vote. If we are going to get it right, we need to look at each regulation and each issue individually. Let's not throw out the baby with the bathwater.

I urge my colleagues to oppose the resolution.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. MCCAIN. Mr. President, I control the time.

Mr. NICKLES. Mr. President, will the Senator from Arizona yield to me?

Mr. MCCAIN. We have been going back and forth, and I will yield to the other side and then yield to the Senator from Oklahoma.

Mr. DORGAN. Mr. President, I yield 3 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 3 minutes.

Mr. LAUTENBERG. Mr. President, I am proud to be a cosponsor of S.J. Res. 17, the joint resolution disapproving the rule submitted by the Federal Communications Commission with respect to broadcast media ownership.

I reviewed the press release the FCC issued on June 2 to announce its changes to the ownership rules. The press release was entitled, ''FCC Sets Limits on Media Concentration.'' The problem with that press release was that the FCC did not set limits; it virtually abolished them. A majority of the FCC commissioners capitulated to an industry they no longer hold at arms' length.

I say capitulated because I read that FCC commissioners and other agency officials have taken more than 2,500 trips valued at $2.8 million since 1995, paid for by the industry the FCC is supposed to regulate. How ''arm's length'' is that?

As an aside, I am heartened that the FCC reauthorization bill the Commerce Committee report puts an end to industry-sponsored travel for FCC Commissioners and staff.

With respect to the ownership rules, it was regrettable that FCC Chairman Michael Powell saw fit to hold one and only one public hearing on the subject.

And it was regrettable that Chairman Powell appeared to be willing to talk with industry officials and the press about the proposed rule changes, but not with the Commerce Committee, until the rule was issued.

It was regrettable that the FCC officials went to great lengths to point out that the agency received nearly one million comments and constituent post cards on the rule changes, and then chose to disregard the vast majority of them.

It is regrettable that the so-called ''diversity index'' cited as justification for further deregulation cannot be used in a petition to determine if companies are violating ownership limits.

It is particularly regrettable that three of the five Commissioners apparently feel that news is just another commodity, like shoes or cars.

News is not just another commodity, except to the media barons who stand to benefit most from the FCC rule changes.

Here is what Lowry Mays, the founder and CEO of Clear Channel, had to say in Fortune magazine recently:

> We're not in the business of providing news and information . . . We're simply in the business of selling our customers products.

Remember, this is the man whose company owns over 1,200 radio stations with some 110 million listeners spread across all 50 States and the District of Columbia.

So much for the public interest.

Over the years, Congress established media ownership rules to ensure that the public would have access to a wide range of news, information, programming, and political perspectives. Over the years, the courts have repeatedly recognized the public interest goals of diversity, competition, and localism.

Consolidating media ownership means that a few large corporations can exercise considerable control over the news.

Is it really in the public interest to make it easier for a few companies to dominate the airwaves and determine what news the American people will, or will not hear?

As the distinguished jurist Learned Hand remarked in 1942, ''The hand that rules the press, the radio, the screen, and the far-spread magazine rules the country.''

I am the only member of the Commerce Committee from the New York metropolitan area. In my back yard, News Corp. already owns two VHF broadcast stations, a daily newspaper, a broadcast network, a movie studio, a satellite service, and four cable networks. Under the new rules the FCC issued, News Corp. will be able to add another TV station and own a total of eight radio stations. And do not forget: News Corp. is gobbling up DirecTV.

That is not diversity. That is not ''fair and balanced.''

At a Commerce Committee hearing on media ownership, Mel Karmazin of Viacom argued that ''Americans are bombarded with media choices via technology never dreamed of even a decade ago, much less 60 years ago.''

That is true, but misleading. Who owns these media? Viacom owns CBS and UPN; 35 television stations that reach 40 percent of the national viewing audience; Paramount Studios; and cable channels such as VH1, MTV, BET, Nickelodeon, Comedy Central, and Showtime.

Viacom, through Infinity Broadcasting, also owns 185 radio stations and has substantial ownership interests in several Internet properties, including CBS.com and CBSMarketwatch.com. Viacom even owns Blockbuster, so it has a significant stake in video and DVD rentals.

It should be self-evident that consolidating media ownership would make it possible for a few large corporations to exercise considerable control over the news.

Media giants also exert enormous control over advertisers. I received a letter last month from Neil Faber, president of NexGen Media, a company that specializes in national and spot broadcasting, print, and outdoor media buys. He wrote:

> For decades I have been deeply concerned with this direction of increasing concentration of ownership. This concentration limits consumer choice and results in higher advertising rates that, in all probability, have been passed on to the consumer in the form of higher prices for products or services and tends to constrain diversity of viewpoints.

New York Times columnist William Safire summed up the problem and what is at stake in a May 22 column. He wrote:

> The overwhelming amount of news and entertainment comes via broadcast and print. Putting those outlets in fewer and bigger hands profits the few at the cost of the many. . . The concentration of power—political, corporate, media, cultural—should be anathema to conservatives. The diffusion of power through local control, thereby encouraging individual participation, is the essence of federalism and the greatest expression of democracy.

In the 1996 Telecommunications Act, Congress directed the FCC to conduct a biennial review of the rule changes the Act contained. Given the complexity of the issue, a biennial review was overly ambitious.

Be that as it may, Chairman Powell said during the biennial review that led up to the rule changes proposed in June, ''Getting it right is more important than just getting it done.'' He said that, but then he did the opposite. The FCC got it done, but did not get it right.

Getting it right means serving the public interest, not increasing ownership concentration and boosting profitability for a few companies' share-holders.

I hope the Senate will pass this joint resolution to send a strong, unequivocal message to the FCC that it got it wrong on June 2.

I ask Unanimous Consent that the letter I received from Neil Faber and the May 22 op-ed by William Safire that appeared in the New York Times be printed in the RECORD.

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

NEXGEN MEDIA WORLDWIDE
INCORPORATED,
August 8, 2003.

Senator FRANK R. LAUTENBERG,
U.S. Senate,
Washington, DC

DEAR SENATOR LAUTENBERG: I am the founder, President, and Chief Executive Officer of NexGen Media Worldwide Inc., a media company that specializes in the planning and execution of media buys across virtually every medium, including national and spot broadcasting, print, and outdoor. We have been in business almost twenty-five years.

As both a media and advertising professional, as an Adjunct Professor of Marketing at NYU for fifteen years, and as a concerned citizen of the U.S. and the State of New Jersey, I am responding to the recent article in The New York Times by Michael K. Powell, Chairman of the Federal Communications Commission on the subject of the FCC's decision that would allow one company to own broadcast stations reaching up to 45% of the national market, an increase from the current cap of 35%.

For decades, I have been deeply concerned with this direction of increasing concentration of ownership. This concentration limits consumer choice and results in higher advertising rates that, in all probability, have been passed on to the consumer in the form of higher prices for products or services and tends to constrain diversity of viewpoints.

It is certainly true that the U.S. has a diverse media marketplace. It is in the spirit of maintaining this diversity that we should avoid concentration of media in the hands of the few. In the past, each local radio station in most markets, as an example, was primarily run by separate entities. While the number of stations is greater, the ownership is by fewer companies. So, this results in fewer independent sources of information (i.e., news, weather, traffic), entertainment, and fewer diverse editorial viewpoints. When one looks at television, the Television Bureau of Advertising shows that from 1980 to the present, the number of television stations available per home grew 8 fold. Yet, the average number of television stations that viewers watch weekly increased by only 2½ times. So, while station options have grown dramatically over this period, relatively speaking, why did the number of stations viewed increase at a dramatically disproportionately lower rate? These facts strongly suggest that there should be more independent outlets, more diversity, with greater freedom of programming choices.

It is logical that even if each station in a corporate structure were totally independently run, at some place in this corporate hierarchy the general manager of each station still reports to one or more top level corporate executives whose major responsibilities include providing ''guidance'' to maximize the corporation's profits. This reality further supports the contention that concentration of ownership also tends to inflate advertising prices and limit editorial viewpoints.

Mr. Powell writes that the major networks own a small percentage of all television stations. The fact is, however, that the stations owned by the networks include those in the major markets that represent the lion's share of the audience in both the local markets and nationally. Here, too, concentration

of ownership presents a potential risk to independent and diverse editorials and creates the framework for higher advertising rates. This is analogous to what occurred in this year's Network Television ''upfront'' marketplace in which advertising prices skyrocketed in the area of approximately 15% to 20% despite an arguably weak economy. It is interesting to note that the advertising dollars deployed for the upfront were concentrated with just a few mega-media buying services accounting for more than 75% of the advertising spent with the networks.

As another example of how concentration of ownership can adversely affect the capacity to effectively negotiate, look at sports programming. It is true, as Mr. Powell states, that many top sports programs have moved to cable and satellite. But, the large media giants also own these outlets, i.e., more concentration. So when negotiating with these cable companies, e.g., advertisers are, in reality, negotiating with the same few media giants who control them.

We live in a free society. Limiting ownership and concentrating media power cuts against the grain of free society choice that is indigenous to our democracy. Competition allows for choice and the ability to have greater choice benefits both consumers and the advertising community. This country needs to move towards more independent stations in the future rather than continuing to concentrate media ownership in the hands of the few. It is not whether we should specifically increase the cap from 25% to 45%, it is the direction to more concentration that needs to be reversed.

Sincerely,

NEIL FABER,
President.

[From the New York Times, May 22, 2003]

THE GREAT MEDIA GULP

(By William Safire)

The future formation of American public opinion has fallen into the lap of an ambitious 36-year-old lawyer whose name you never heard. On June 2, after deliberations conducted behind closed doors, he will decide the fate of media large and small, print and broadcast. No other decision made in Washington will more directly affect how you will be informed, persuaded and entertained.

His name is Kevin Martin. He and his wife, Catherine, now Vice President Dick Cheney's public affairs adviser, are the most puissant young ''power couple'' in the capital. He is one of three Republican members of the five-person Federal Communications Commission, and because he recently broke ranks with his chairman, Michael Powell (Colin's son), on a telecom controversy, this engaging North Carolinian has become the swing vote on the power play that has media moguls salivating.

The F.C.C. proposal remains officially secret to avoid public comment but has forced into the open by the two commission Democrats. It would end the ban in most cities on cross-ownership of television stations and newspapers, allowing such companies as The New York Times, The Washington Post and The Chicago Tribune to gobble up ever more electronic outlets. It would permit Viacom, Disney and AOL Time Warner to control TV stations with nearly half the national audience. In the largest cities, it would allow owners of ''only'' two TV stations to buy a third.

We've already seen what happened when the F.C.C. allowed the monopolization of local radio: today three companies own half the stations in America, delivering a homogenized product that neglects local news coverage and dictates music sales.

And the F.C.C. has abdicated enforcement of the ''public interest'' requirement in issuing licenses. Time was, broadcasters had to regularly reapply and show public-interest programming to earn continuance; now they mail the F.C.C. a postcard every eight years that nobody reads.

Ah, but aren't viewers and readers now blessed with a whole new world of hot competition through cable and the Internet? That's the shucks-we're-no-monopolists line that Rupert Murdoch will take today in testimony before the pussycats of John McCain's Senate Commerce Committee.

The answer is no. Many artists, consumers, musicians and journalists know that such protestations of cable and internet competition by the huge dominators of content and communication are malarkey. The overwhelming amount of news and entertainment comes via broadcast and print. Putting those outlets in fewer and bigger hands profits the few at the cost of the many.

Does that sound un-conservative? Not to me. The concentration of power—political corporation, media, cultural—should be anathema to conservatives. The diffusion of power through local control, thereby encouraging individual participation, is the essence of federalism and the greatest expression of democracy.

Why do we have more channels but fewer real choices today? Because the ownership of our means of communication is shrinking. Moguls glory in amalgamation, but more individuals than they realize resent the loss of local control and community identity.

We opponents of megamergers and cross-ownership are afflicted with what sociologists call ''pluralistic ignorance.'' Libertarians pop off from what we assume to be the fringes of the left and right wings, but not yet realize that we outnumber the exponents of the new collective efficiency.

That's why I march uncomfortably alongside CodePink Women for Peach and the National Rifle Association, between liberal Olympia Snowe and conservative Ted Stevens under the banner of ''localism, competition and diversity of views.'' That's why, too, we resent the conflicted refusal of most networks, stations and their putative purchasers to report fully and in prime time on their owners's power grab scheduled for June 2.

Most broadcasters of news act only on behalf of the powerful broadcast lobby? Are they not obligated, in the long-forgotten, ''public interest,'' to call to the attention of viewers and readers the arrogance of a regulatory commission that will not hold extended public hearings on the most controversial decision in its history?

So much of our lives should not be in the hands of one swing-vote commissioner. Let's debate this out in the open, take polls, get the president on the record and turn up the heat.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, I yield 3 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 3 minutes.

Mr. NICKLES. Mr. President, I urge our colleagues to vote no on this resolution. By using the Congressional Review Act, which I worked on and helped pass with my colleague and friend Senator REID from Nevada, we would totally throw out the entire FCC regulation. Some people disagree with parts of the regulation, but we would be throwing out the entire regulation.

The Senator from Arizona said let's do this the old-fashioned way. Let's have hearings and mark up a bill so there is a bill that is going through the authorizing committee and there is also some language going through the Appropriations Committee. Maybe those are better and more appropriate vehicles than the Congressional Review Act, which rejects the entire regulation.

What about the cross ownership rules? Cross-ownership rules say if one has a newspaper, they cannot own a TV station, or vice versa. Well, unless they were grandfathered years ago, they could, but if they are new in the business, they cannot own both. The ban on cross ownership was modified on sound reasoning and solid evidence. The antiquated ban should not be reinstated.

My colleague from Nevada, who is now presiding, said things have changed. We now have thousands of radio stations. We have lots of opportunities. We have new vehicles. We have the internet. We have cable. We have lots of opportunities for people to get their news from a variety of sources. If we throw out these rules, we are almost saying we want to live by and maintain those old rules, which really are archaic and do not work.

This is too Draconian of a measure, to throw out the regs in their entirety. I urge our colleagues to vote no on the resolution.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. How much time is remaining on both sides?

The PRESIDING OFFICER. On the Republican side, 3 minutes 44 seconds. On the Democratic side, there are 10 minutes 13 seconds.

Mr. MCCAIN. Mr. President, I will take 1 more minute.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, again, I do not view this issue as one that is driven by ideological bias, but it is one which I think deserves a great deal more consideration.

Again, I urge my colleagues, as busy and as crowded as our calendar is, to bring up S. 1046 which has been reported out and is on the calendar. That would give us time to fully debate and amend these very complex and difficult issues. Therefore, I oppose the passage of CRA.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I yield myself the remaining time.

I have great respect for those who disagree with the position that I, Senator LOTT, and many others have taken on this issue, but the resolution of disapproval, which is part of the Congressional Review Act, is, in effect, a legislative veto. It is perfectly appropriate to use it in this circumstance.

I will talk a little bit about why this bipartisan resolution is important. First, it is acknowledged by everyone that we have had galloping concentration in the broadcast industry in recent years. One company now owns

well over 1,200 radio stations. The same is happening in television. I do not happen to think big is always bad but I think the FCC's new rules will just hasten the day when we have fewer and fewer companies owning virtually all of the broadcast properties in this country.

So if one thinks that what the American people see, read, and hear should be controlled by fewer and fewer people, then they would like the FCC rules and they would want to oppose this resolution of disapproval. But if they believe in localism, diversity, and competition, which are the hallmarks of the reason we provide free licenses and the free use of the airwaves to companies by which they profit, in which we say to them they have responsibilities attached to this license, localism, diversity, competition, if you believe those enhance this country, enhance local areas or communities or counties or States, then you are going to want to support this resolution of disapproval.

A lot of our folks think the FCC has written rules that fundamentally weaken our democracy. Our democracy is nourished by the free flow of information, by localism, by competition. The fact is, three-quarters of a million people sent their comments to the FCC saying: Don't do this. It ranges from the National Rifle Association, National Organization for Women, Walter Cronkite, Jesse Helms. This is a broad-based group of American people who believe very strongly that what the FCC has done is wrong.

The most dramatic rule changes in the history of broadcasting have been embarked upon by the FCC with one hearing in Richmond, VA. They concocted this rule that said: Oh, by the way, here is what we think should happen. We believe it is all right, in the largest city in this country, for one company to own the dominant newspaper, three television stations, eight radio stations, and the cable company. And the same company can do that in the largest city, the next largest city, the next largest city, the next largest city.

It is not all right. We know better than that. Let me describe a little of what is happening with this concentration. Perhaps you are driving down the street in Salt Lake City listening to your car radio, tuning the dial until you find a radio station you happen to enjoy, one with good music, someone with a sonorous voice saying: Good morning in Salt Lake City. It's sunny here. What a beautiful day outside. The sky is blue.

And you think what a great announcer they have in Salt Lake City when, in fact, that person may be broadcasting from a basement broadcast booth in Baltimore, MD. It is called voice track. It is called let's pretend. Let's pretend someone is broadcasting locally, but instead that person is using the Internet information to say it is sunny here in Salt Lake City, trying to make folks in Salt Lake City believe they are broadcasting in Salt Lake City. ''Voice tracking''—remember that term.

Central casting—it is the same approach in television. You like that? You just take localism, take local interest out of broadcasting and pretend it is local. If localism is unimportant, why do they even have to pretend?

What about turning on your television set seeing people eating maggots? Yes, you can see that on television. Maybe you don't like seeing people eating maggots. Maybe you think seeing people eat a cupful of maggots shoved in front of them—maybe you think that ought not be shown in our community.

So you call the broadcaster, and you say I am going to complain about this programming. How did you do this? Why would you show a program in which people eat maggots?

And the broadcaster writes back—this happens to be a July 25 letter. I won't use names:

> We received your letter dated June 30, 2003, regarding the content of the . . . show. . . .
>
> We forwarded your letter to the . . . Network. The Network, not [us], decides what shows go on the air here for the . . . Owned and Operated Television Stations.

The network likes maggots. It comes to your hometown and you don't have a choice, nor would a local broadcaster, and certainly not affiliates, stations owned by the broadcaster. They are going to broadcast it.

What has happened to localism? Dead? Wounded? Bleeding? If the FCC has its way with this rule, it will be gone, just plain gone.

Is there a reason for us to be concerned? I think so. There is a broad, bipartisan group of interests in the Senate using the legislative veto to say let's say to the FCC: What you have done is wrong.

Let me read a letter from our distinguished former colleague, Jesse Helms, because, as always, he puts it very succinctly.

Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 4 minutes 13 seconds.

Mr. DORGAN. Jesse Helms wrote a letter to my colleague, Trent Lott.

> Dear Trent:
>
> Thank you for your leadership in trying to undo the disaster created by the Federal Communications Commission's new media ownership rules. These rules will benefit huge conglomerates and no one else.

Let me point out, Senator Helms is one of the few people who served in this Senate who came from a broadcast background.

> Sometimes I think people in Washington, particularly at the Commission, have forgotten that the FCC role is to preserve localism, diversity, and competition. In no way are those criteria supported by the recent FCC ruling. If the commission fails, as it has, then Congress must step in. You and Senator DORGAN have done that. I can think of no reason to allow fewer companies to own more and more of the media. Media ownership is a bipartisan issue that commands a close review by Democrats and Republicans.
>
> When your resolution comes to the Senate floor, I'll be cheering for 51 votes.

It is signed by Jesse Helms, former U.S. Senator.

In this morning's newspaper, the FCC chairman, Mr. Powell, makes comments about what we are doing here today. I happen to like Chairman Powell. Personally, I think he is a good person. We have had a good relationship. I think he has made a horrible mistake. His leadership on this issue at the Federal Communications Commission, as I have said previously, has led the Commission to cave in as quickly and as completely to the special interests as anything I have ever seen.

Mr. Powell says ''the move in the Senate today'' referring to this move ''is bordering on the absurd.''

I am sorry. There is nothing at all absurd about the Senate taking direct aim at a rule by a Federal regulatory agency that is wrongheaded, and saying we are going to veto this rule. There is nothing absurd about that at all.

This Congress has the right under this legislation to do it. This has been rarely used. It is the second occasion in which the Senate has used this. We would only do it when a regulatory agency, issuing regulations, has so starkly decided to misrepresent what is the public interest.

The FCC is a regulatory body. One would expect them to wear striped shirts and have a whistle and blow the whistle when it is needed on behalf of the public interest, to stand up for the public interest. But when regulatory agencies refuse to stand for the public interest, then we must take action.

My colleague, Senator MCCAIN, talks about S. 1046. I am a cosponsor of that legislation. I support it very strongly. I hope the Senate will pass that as well. I will only observe that this resolution of disapproval will run into some whitewater rapids when it comes to the House. I understand that. So, too, would S. 1046 if it gets to the House of Representatives.

The fact is, we ought to in every conceivable way avoid the problems that will come from these rules. My colleagues and others have talked about the problem of growing concentration in the media. It is getting worse, not better. The worst possible result, in my judgment, would be to say let's just let the FCC rules go into effect.

A Federal circuit court has already issued a stay. They understand that the American people were not given the opportunity in the hearing, the one hearing that existed in Richmond, VA. The case has not been made for this FCC rule. So we have a stay at the Federal court.

A reasonable step and a thoughtful step on behalf of this Senate is to stand up this morning for the public interest and say to the FCC: You had a responsibility and you failed. We have every right under the Congressional Review

Act to enact, this morning, a resolution of disapproval. I hope sufficient numbers of my colleagues will join me, will join Senator LOTT, and others, in a strong bipartisan resolution to say we don't like what the FCC has done. We think it is not at all in support of the public interest. We believe it undermines this democracy which rests on the free flow of information. We believe we ought to disapprove of this rule.

The PRESIDING OFFICER. All time has expired.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MCCAIN. Mr. President, at the request of the leadership, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The PRESIDING OFFICER. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The question is on passage of the joint resolution. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Oregon (Mr. SMITH) is absent because of a death in the family.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), and the Senator from Vermont (Mr. LEAHY) are necessarily absent.

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

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

The result was announced—yeas 55, nays 40, as follows:

[Rollcall Vote No. 348 Leg.]

YEAS—55

Akaka	Conrad	Inouye
Alexander	Corzine	Jeffords
Allard	Daschle	Johnson
Baucus	Dayton	Kennedy
Bayh	Dodd	Kohl
Biden	Dole	Landrieu
Bingaman	Dorgan	Lautenberg
Boxer	Durbin	Levin
Byrd	Enzi	Lieberman
Cantwell	Feingold	Lincoln
Carper	Feinstein	Lott
Chafee	Harkin	Mikulski
Clinton	Hollings	Murray
Collins	Hutchison	Nelson (FL)
Nelson (NE)	Rockefeller	Stabenow
Pryor	Sarbanes	Voinovich
Reed	Schumer	Wyden
Reid	Shelby	
Roberts	Snowe	

NAYS—40

Allen	DeWine	McConnell
Bennett	Domenici	Miller
Bond	Ensign	Murkowski
Breaux	Fitzgerald	Nickles
Brownback	Frist	Santorum
Bunning	Graham (SC)	Sessions
Burns	Grassley	Specter
Campbell	Gregg	Stevens
Chambliss	Hagel	Sununu
Cochran	Hatch	Talent
Coleman	Inhofe	Thomas
Cornyn	Kyl	Warner
Craig	Lugar	
Crapo	McCain	

NOT VOTING—5

Edwards	Kerry	Smith
Graham (FL)	Leahy	

The joint resolution (S.J. Res. 17) was passed, as follows:

S. J. RES. 17

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Federal Communications Commission relating to broadcast media ownership (Report and Order FCC 03–127, received by Congress on July 10, 2003), and such rule shall have no force or effect.

Mr. DORGAN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE—H.R. 2754

Mr. DOMENICI. Mr. President, we are currently on the energy and water bill. There is pending a Feinstein amendment. We have talked about it.

I ask unanimous consent, and this is acceptable to the other side and the proponents, that a vote occur on or in relation to the Feinstein amendment at 2:30 p.m. this afternoon.

Mr. REID. Reserving the right to object, I ask there be no amendments in order prior to that vote and that the time between 2:15 and 2:30 be equally divided.

The PRESIDING OFFICER. Does the Senator so amend his request?

Mr. DOMENICI. I have no objection.

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

Mr. DOMENICI. Mr. President, I say to the Senate, we are on an energy and water bill. There is no long list of amendments we are aware of. We are aware of two, maybe three amendments. We ask that Members help us finish this evening. It seems now it is the will of both the majority and the minority we finish tonight.

The next subject matter will be an appropriations bill, from what I understand. The majority leader has so committed the next bill will be an appropriations bill. There should be no reason why we cannot finish this bill tonight. There may be two amendments. There may be three. On the other hand, there could be just one. We would like Senators to help by getting those amendments as soon as possible so right after the 2:30 vote we can move right ahead with the next amendment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, through you to my distinguished Chair of the subcommittee, Senator JACK REED of Rhode Island is ready to offer his amendment immediately following the vote on the Feinstein amendment. We understand there may be an amendment offered by Senator CANTWELL. There may be some procedural problems with that. We are still working on that. I am confident she will be ready to offer that as soon as we finish the Reed amendment. There may be another amendment Senator DOMENICI and I have been working on, working with the chairman of the full committee to see if that can be resolved in some other way.

I have not spoken to either of the leaders about this, but I have had many questions about the storm that is coming. People are very concerned about that for very personal reasons. The storm, we believe they have indicated, now will strike about noon on Thursday. If it keeps going the way it is, it will be a very devastating storm. We know some people have obligations this weekend. As I said, I have not spoken to the two leaders, but as the storm develops I am sure they will talk to us.

I agree with the chairman of the subcommittee, Senator DOMENICI. We will move forward and have all the amendments offered tonight and finish this bill tonight. If there is some reason we cannot do the votes tonight, we will have the votes set for tomorrow morning. We will move to expeditiously finish this bill as soon as possible.

The PRESIDING OFFICER. The Senator from Wyoming.

GRAMPA ENZI

Mr. ENZI. Mr. President, this last weekend I got a new name. Fifty-nine years ago when I was born I was named Michael Bradley Enzi. The middle name comes from my Grampa and Gramma Bradley on my mother's side. They were homesteaders in Montana. My grandfather on my dad's side homesteaded in North Dakota and named his son Elmer, but he died shortly after I was born and before I could know him. My dad's favorite song was ''Elmer's Tune'' but he thought there were enough Elmers already and named me Michael. I grew up being Mickey and then Mike. As I mentioned, this last weekend I got a new name and I am truly delighted.

I am now Grampa—and that is spelled with an M, not an N, and there is no D in it. I will explain that in just a moment.

My son and his wife had a son. My son, also like me, had the good fortune to overmarry, to Danielle, a delightful young lady from Kentucky whom he

met in Washington, DC. She is one of the most organized, focused, and thoughtful people I know. My son Brad and daughter-in-law Danielle had a son. I cannot begin to share the emotion and feeling that overwhelms me today. It is such an incredible feeling to hold another generation in your hands.

When my son was born, we named him Michael Bradley Enzi, as well, and instead of giving him the title junior we just used his middle name Brad to avoid confusion. Now we have a third Michael Bradley Enzi, but we do not believe in titles so we call him Trey to avoid confusion. Now Danielle and Trey had extremely fortunate timing for Diana and me. Trey was supposed to be born the end of this month, but he and his mother moved that up to when Diana and I were in the neighborhood. Diana and I met Brad and Danielle on Friday so I could get the transportation system. We used to call that strollers and car seats; now it is transportation systems. My dad started a tradition of buying the wheels for my kids. That means the wagons, the skateboards, the rollerblades, the bikes, et cetera. When I heard I was going to be a grampa, I staked the ''wheels'' out, too.

So we picked out the transportation system. Danielle thought she started having contractions. We knew she had walked a lot. So Brad checked her into the hospital at midnight. At 8 a.m. the water broke, and at 4:21 p.m., Saturday, September 13, we all got new names. Trey weighed 6 pounds 14 ounces and was 20½ inches long, with huge hands and long feet, of course—his 6 foot 8 inch dad, who played basketball for Wyoming, has size 16 feet and easily palms a basketball.

Danielle came through, as is her nature, invigorated and enthusiastic. You would not have known by looking at her face, except for that special aura of being a mother, that she had just given birth. The rest of us were emotional wrecks. The best way I can tell you of the thrill is to tell you that we canceled the events of the weekend and extended an extra day, and I spent as much of that time as I could just holding that baby, watching him breathe and move ever so slightly, and listened to every little sound he made. Of course, I had to let Diana hold him a little, too. And his mom and dad even wanted turns.

If you would have told me I would spend hours just gazing at this miracle of life, and having only that thought for hours, I probably wouldn't have believed you. But I have some instant replay memories of that little face and those moving hands and those blankets and that cap, to hold the body heat in, locked in my mind.

I am constantly doing little instant replay memories for myself and thanking God for the opportunities he has given me—from finding Diana and learning about prayer with our first child, the daughter who was born premature, who showed us how worthwhile fighting for life is, to the birth of our son, to the birth of our youngest daughter, who just got married, to helping me through open heart surgery so that I might have this chance to hold yet another generation in my hands.

I think of the Prayer of Jabez in Chronicles, where he says: ''Lord, please continue to bless me, indeed.'' And to that I add my thanks for this and all the blessings noticed and unnoticed.

So I am a grampa. That is not grandfather—too stilted. Years ago my daughter gave me a hand-stitched wall hanging that says: ''Any man can be a Father, but it takes someone special to be a Dad.''

The name is also not grandpa. That is a little too elevated. My grampa—spelled with an M and no D—my Grampa Bradley took me on some wonderful adventures. He taught me a lot—fishing, hunting, and work. He ''let'' me help him plant and water trees when I was 4. He showed me how to chop sagebrush and make flagstone walks. He covered up holes he encouraged me to dig. He covered them so people wouldn't drive a car into them. He taught me how to spade a garden, mow a lawn, and trim it properly.

He later showed me the point in life when you are supposed to start carrying the heavy end of the log. Later in life, he had heart trouble and couldn't go fishing by himself, so he took me along. After a few minutes, he would place himself at the picnic area and visit with the tourists who stopped. He would tell them about his grandson who would be arriving shortly with fish and have quite a group waiting for my return.

He liked to be called Grampa. And I am now delighted to have the opportunity to earn that name. I wish I could adequately share with you the joy in my heart.

Trey, grandson, welcome to this world of promise and hope and love.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I congratulate the Senator from Wyoming, who just entered another phase of his life. He is a grampa, but he can also get very silly. I am a grandpa, and I know the silliness that comes along with it. It is a wonderful kind of silliness, and it is a dimension in life of which I hope all men have the opportunity to be a part.

So my neighbor in the West and my neighbor here on Capitol Hill, to you and your bride, who is now a grandma, congratulations.

Mr. SESSIONS. Mr. President, will the Senator yield 1 minute, please?

Mr. CRAIG. I yield.

Mr. SESSIONS. Mr. President, I add my congratulations to Grampa ENZI and Diana. There is no Member of this body who exemplifies family values more than those two. There is no Senator who has greater affection in this body. Trey has a great family to join.

My wife Mary and I are so excited for you. She called me early this morning to report the news. We express our congratulations to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Idaho.

THE HEALTH OF OUR FORESTS

Mr. CRAIG. Mr. President, I thought I would spend a few moments this morning talking about an impending crisis that is offshore of the east coast at this moment that may well be headed our way.

Hurricane Isabel could well make its way into this region and do great devastation. That devastation could well be to the forests and the timberlands of North Carolina and Virginia. And it could well be in some areas of Maryland, where it could come ashore.

The reason I stand before the Senate this morning to talk about it is that we in the West are experiencing another kind of catastrophic event in our forests. They are called wildfires. Yet somehow we in the Senate, in the shaping of public policy, do not look at hurricane crises in our forests and our public lands the way we look at wildfires. In August of 1910, a wildfire started in Idaho and Montana, and 3 days later 3 million acres of land were gone.

Our forest health problems are not isolated to the problems of the rural West. In 1989, Hurricane Hugo slammed ashore near Charleston, SC, and cut a path northwest through North Carolina and into Virginia. On the Francis Marion National Forest, 70 percent of the trees were killed. We, the Government, immediately expedited the process of cleanup, salvage, and replanting, funneling millions of dollars into that effort. This is a similar expected path of Hurricane Isabel, and the Governor of Virginia has already declared a state of emergency.

In January of 1998, over 17 million acres of forests were heavily damaged in an ice storm that stretched across New York State, New Hampshire, Vermont, and into Maine. We responded appropriately with $48 million to help in the cleanup.

In the spring of 1999, when a blowdown, followed by a southern bark beetle epidemic, hit the Texas National Forests, we provided emergency exemptions that allowed managers to enter into wilderness areas—believe it or not—to sanitize the stands to slow down the insect infestation.

Just last year, in the supplemental Defense appropriations bill, we helped Senator DASCHLE and Senator JOHNSON deal with forest health emergencies in their State of South Dakota by suggesting that, by law, NEPA appeals not be able to be litigated.

Each time, a commonsense approach was supported by this body when a crisis hit our public forests. Each time,

we reached out to our neighbors and said: We will help clean up the forests to ensure the health of the forests and to ensure the vitality of those forests for wildlife and for human life.

As the Healthy Forest legislation comes up for debate, the Senator from New Mexico—who is in the Chamber now to handle the energy and water appropriations bill—and I, the other Senator from Idaho, MIKE CRAPO, and the Senator from Mississippi have been working with our colleagues from California and Oregon to assure that we can begin a process on the public lands of the West to attempt to clean them up, to reassure healthy forests. Yet somehow—by some groups, and by some Senators—it is looked at as an entirely different process from what Hurricane Isabel could well do to the forests of the Carolinas and to the forests of Virginia.

Out West and across other forests of our country, this year we have lost nearly 4 million acres to wildfire and yet we struggle to get the money, we struggle to get the right to allow the process to clean up, to rehabilitate and reestablish the environment of these forests. It is time we wake up. What is happening to the forests of the West today is natural. It is a result of bug kill, it is a result of drought, and it is a result of us taking fire out of the ecosystems a good number of years ago. Somehow now we are not being allowed to treat it the very way we have allowed hurricane damage and other natural damages to be treated.

So I plead with the Congress, I plead with this Senate, to realize this, to work with us to build a healthy forest bill. I thought it was appropriate to come to the Senate floor to say this at a time when Isabel is about ready to hit land and begin to damage the forests of the East Coast.

I yield the floor.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2004

The PRESIDING OFFICER (Mr. ENZI). Under the previous order, the Senate will resume consideration of H.R. 2754, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2754) making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes.

Pending:

Feinstein amendment No. 1655, to prohibit the use of funds for Department of Energy activities relating to the Robust Nuclear Earth Penetrator, Advanced Weapons Concepts, modification of the readiness posture of the Nevada Test Site, and the Modern Pit Facility, and to make the amount of funds made available by the prohibition for debt reduction.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I am very pleased today that we have set a time and we are going to vote on the so-called Feinstein amendment. I am also pleased we will hear from a very distinguished Senator whose thoughts and reputation in the Senate, from this Senator's standpoint, are becoming more valid, more looked upon, and listened to.

The issue before us is a straightforward issue that is trying to be made complex. It is not the issue of building new nuclear weapons. Senator CHAMBLISS and I can start off by saying there is nothing in this bill that permits us to build a single, solitary, new nuclear weapon. That requires an act of Congress that is not before us.

Secondly, the Senator knows it provides for the testing ground in Nevada, which we had said since we put it in mothballs, it should be ready for testing at any time. Any time today means 3 years. Under this legislation, at the request of the administration, it will be modernized so it will only take 1½ years to get ready for a test, if a test is necessary.

So far, those things I have said, it would seem to me, should pass this Senate 100 to 0. There are two other issues I am sure my friend from Georgia will explain, but none of them do anything to build a new line of nuclear weapons for this great Nation. That is not the issue, and I hope the Senator from Georgia will join me in convincing a few more Senators this is an issue to be defeated. Small funding, big ideas; little, tiny funding with great repercussions if we fail to do what we ought to do.

I yield the floor and welcome the Senator's comments.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. I thank the Senator from New Mexico for his kind comments, but most importantly I thank him for his strong leadership on the issue of energy and any number of other issues. In my years in the House I had the privilege of working with the Senator when he was chairman of the Budget Committee. What great leadership he provided, and he is carrying that forward as chairman of the Appropriations Subcommittee on Energy now. It is indeed a privilege and a pleasure to work very closely with him to make sure a strong energy policy is developed in the United States of America, something that is sorely lacking. Under the Senator's leadership we are going to make sure that happens.

Before I make my comments relative to this amendment, though, I cannot help but take a minute to say to the Presiding Officer that as a grandfather twice over, I am very happy for the Chair and Diana. I will say if he thinks he is having fun today, every day gets more and more fun.

Being the obnoxious grandparent I am, I would like to compare pictures with the Presiding Officer as he moves down the road. My pictures of little John and little Parker are something special that I hold very near and dear. I see the Chair already has his. So we will compare them early on.

I rise today to speak in opposition to the amendment offered by my distinguished colleague, Senator FEINSTEIN. I do not support this amendment for several reasons and I would like to take a few minutes to outline my concerns. The amendment offered contains four provisions, all of which will negatively affect our Nation's security and our ability to maintain a modern and safe nuclear weapons capability.

This amendment prohibits our Nation's scientists from researching one of the foremost military challenges our Nation faces, which is an enemy using a hardened, deeply buried facility to protect weapons of mass destruction or carry out command and control operations. Our Nation has just begun exploring whether modified existing warheads might be effective in countering such targets. The underlying bill provides funds to conduct the second year of a 3-year feasibility study to see if existing weapons can be modified to address this critical threat. The bill allows the United States to simply explore—and I emphasize the word—the full range of weapons concepts that could offer a credible deterrent and response to new and emerging threats. It is imperative that our Nation continue to perform this research. It absolutely has to be done.

The funding for advanced concepts that this amendment strikes will also prohibit our scientists from exploring and incorporating changes to our existing nuclear-related programs, including upgrades to safety and security measures that make our nuclear arsenal more reliable and safer. Advanced concepts are the ''idea machines'' for scientists and engineers at our national laboratories that allow them to take advantage of advancement in technology. Essentially, this amendment would restrict our scientists from doing their job, which is to improve the reliability and sustainability of our programs.

The amendment also restricts funding for the improvement of our country's timeline to prepare for an underground nuclear test. Our goal is to reduce the timeline from the current threshold of 36 months to 18 months. The President could decide that a test is necessary to confirm a problem or test a fix to a problem involving the safety, security or reliability of a nuclear weapon in the stockpile. This administration has determined that, should such a test become necessary, the United States should not have to wait 3 years to address the problem in the stockpile. As our nuclear systems age, the necessity to conduct a test becomes more likely, should the President determine that it is in the national interest to do so. This amendment would make our Nation and our nuclear arsenal less, not more, secure.

The last provision in this amendment would have the most drastic effect, I believe, to our Nation's security. For the first time in more than a decade, the United States will now be able to

design and implement a program to manufacture a plutonium pit, an essential nuclear warhead component. The lack of this proficiency has seriously constrained our ability to maintain our nuclear stockpile. In fact, the Department of Energy, in 2002, indicated that the U.S. is the only nuclear power that lacks the ability to manufacture ''pits.'' All pits currently in the U.S. nuclear stockpile were made at the Rocky Flats Plant near Denver, CO, which opened in 1952. The Department of Energy halted pit manufacturing operations there in 1989. The administration has proposed a multi-year planning and design process that would result in a final decision on constructing a modern pit facility in 2011. If construction is approved, the proposed facility would begin full operation in 2020. The modern pit facility allows us to incorporate this capability into our nuclear weapons program and modernize our systems accordingly.

Should this amendment pass, the United States' capabilities for ensuring a safe, reliable nuclear arsenal will continue to regress for several years. This amendment will prohibit the U.S. from taking advantage of the latest technology.

Let me reiterate, the U.S. is not planning to resume testing; nor are we improving test readiness in order to develop new nuclear weapons. In fact, the U.S. is not planning to develop any new nuclear weapons at all. Our goal is to maintain a safe, secure, reliable, and effective nuclear weapons program, and for this reason I oppose the pending amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I rise to oppose the amendment. I thought I would comment in three areas.

First of all, I have had an opportunity to visit our laboratories in the United States. I will talk a little bit about that. Then I would like to review where we are in the overall aspect as far as our nuclear weapons are concerned. Finally, I will talk a little bit about what is in the authorization bill we passed in the Senate earlier on in the year, and talk a little bit about the fact that we have considered most of these amendments already. I don't understand why we are bringing them up for reconsideration, because the Senate has spoken.

I had an opportunity earlier this year to go around and visit the laboratories. I began to understand how important it is—that we need to study our nuclear weapons and we need to understand where we are in regard to the strategic nuclear stockpile.

Not long ago, several years back, the hope for the strategic nuclear stockpile was that it would work, but there was skepticism in the scientific community. But going around the laboratories earlier this year, those scientists, very capable scientists, very dedicated employees we have in our laboratories—and they want to see world peace and they don't necessarily want to see the proliferation of nuclear weapons—understand the need for us to know what is happening as far as our own strategic stockpile is concerned; that we need to continue to evaluate the threats from our enemies or potential enemies and where we stand in relation to that threat.

I was convinced that we need to do studies; we need to do some design thought; we need to bring it up for discussion. Nobody is out here saying we need to go into a nuclear arms race. I think that is overstated. But I think there is a lot of science that needs to be known, still, as far as nuclear weapons. We are going through a period of time where our stockpile is aging. Because it is aging, there are some phenomena that we perhaps do not understand. We want to make sure we understand. We want to make sure we have a safe environment and, from a safety aspect, that we understand what happens with aging.

The administration's budget request for fiscal year 2004 included several initiatives to advance their agenda as spelled out in the 2001 Nuclear Posture Review. The Nuclear Posture Review laid out a plan to reduce the nuclear threshold by making advances in conventional munitions and missile defense capabilities, and in revitalizing our nuclear weapons infrastructure, while at the same time reducing the number of nuclear weapons—reducing the number of nuclear weapons in our stockpile from around 6,000 to between around 1,700 and 2,200 operationally deployed nuclear warheads.

One focus of the Nuclear Posture Review is to make advances in our nuclear weapons capabilities to deter future threats instead of maintaining a nuclear weapons stockpile which was designed to deter past threats.

This bill includes funding to support the administration's initiatives. Specifically, the Senate bill provides $6 million for advanced concepts, $15 million to continue a 3-year feasibility study on the robust nuclear earth penetrator, which is commonly referred to as RNEP, and $25 million to enhance our test readiness capabilities at the Nevada Test Site. That was mentioned in previous comments on the Senate floor, how important it is in order to meet our 18-month response requirement that this needs to be met. There needs to be money to meet that requirement. And there is $23 million to continue conceptual design efforts for a modern pit facility. Each of these individual facilities will enhance our Nation's readiness and capabilities in support of the Nuclear Posture Review.

I think the Members of the Senate need to know the Nuclear Posture Review was analyzed by those people in the know, those people who understand what is happening in other countries, people who understand the science and understand where we are in this country.

The advanced concepts initiative will support preconceptual and concept definition studies and feasibility and cost studies approved by the Nuclear Weapons Council. With advanced concepts, we are beginning to challenge our scientists, designers, and engineers to consider what is within the art of the possible. They will be challenged to think, discover, create, and innovate. By supporting the administration's request for the advanced concepts initiative, we will ensure there is an active advanced development program to assess the capabilities of our adversaries, conceptualizing innovative methods for countering those threats, developing weapon system requirements in response to our adversaries, and prototyping and evaluating the concepts.

The advanced concepts initiative will also help our experts to design enhanced safety and security aspects for our nuclear weapons, particularly the aging nuclear weapons that we possess.

The Feinstein amendment would strike this funding for advanced concepts.

The RNEP study is not a new issue for the Congress to consider. Last year, Congress authorized and appropriated $15 million for the first of the 3-year feasibility studies on the robust nuclear earth penetrator. This bill provides funding for the continuation of the feasibility study. It does not authorize the production or deployment of such a capability. The RNEP feasibility study will determine if one of two existing nuclear weapons can be modified to penetrate into hard rock in order to destroy a deeply buried target that could be hiding weapons of mass destruction or command and control assets.

The Department of Energy has modified nuclear weapons in the past to modernize their safety, security, and reliability aspects. We also modify existing nuclear weapons to meet new military requirements. The B61–11, one of the weapons being considered for the RNEP feasibility study, was already modified once before to serve as an earth penetrator to hold specific targets at risk. At that time, the modification was to assure the B61 could penetrate frozen soils. The RNEP feasibility study is an attempt to determine whether the same B61 or another weapon, the B83, could be modified to penetrate hard rock or reinforced underground facilities.

Funding research on options, both nuclear and conventional, for attacking such targets is a responsible step for our country to take.

Admiral James Ellis, Commander of U.S. Strategic Command, confirmed in testimony before the Strategic Forces Subcommittee on April 8, 2003, that not all hardened and deeply buried targets can be destroyed by conventional weapons. Many nations are increasingly developing hardened and deeply buried targets to protect command and communications and weapons of mass destruction production and storage assets. It is prudent to support the study

of potential capabilities to address this growing category of threat.

What the Senate bill provides funding for is simply the second year of the 3-year feasibility study, nothing more. Should the National Nuclear Security Administration determine through this study that the robust nuclear earth penetrator can meet the requirements to hold a hardened and deeply buried target at risk, NNSA still could not proceed to full-scale weapon production development or deployment without an authorization and appropriation from Congress.

We should allow our weapons experts to determine if the robust nuclear earth penetrator could destroy hardened and deeply buried targets and to assess what would be the collateral damage associated with such capability. Then Congress would have the information it needs to decide whether development of such weapons is appropriate and necessary to maintain our Nation's security.

The Feinstein amendment would strike funding to continue the ANEP feasibility study.

The enhanced test readiness initiative has also been closely considered by the Congress and the administration. The House and the Senate Armed Services Committees required the Department of Energy, in consultation with the Department of Defense, to do a study to determine the optimum readiness posture for the Nevada Test Site. After a thorough review, the optimal test readiness posture chosen by the Department of Energy was 18 months.

Against the thoughtful consideration of both the Congress and the administration, the Feinstein amendment would strike the funding to allow our Nation's readiness to be enhanced at the Nevada Test Site.

Another important initiative is the continuing efforts to design and construct a modern pit facility to ensure the United States can, once again, manufacture plutonium pits for our existing nuclear weapons stockpile and for future weapons design, if necessary. The United States is the only nuclear power which does not have the current ability to mass produce plutonium pits.

Let me restate that. The United States is the only nuclear power that does not have the current ability to mass produce plutonium pits.

Although we have limited capabilities to produce a few pits at the Los Alamos National Laboratory since the shutdown of Rocky Flats in my home State of Colorado, the United States has not produced plutonium pits. That is a problem for our aging nuclear weapons stockpile since the pits and those weapons are aging beyond their design life, and as a radioactive material, plutonium continues to deteriorate until the pits can no longer be usable. The Feinstein amendment would strike funding for the modern pit facility.

All of the administration's nuclear weapons initiatives are designed to make sure the United States has the best and the brightest scientists and engineers prepared to innovate, create, test, and even manufacture, if necessary, to make sure any adversary is deterred from conducting harmful actions against the United States or its allies.

There are protections in the National Defense Authorization Act which provide that, at a minimum, no engineering design work can occur on the robust nuclear penetrator without specific authorization from Congress. We maintain our ability to control any mass production of those nuclear weapons.

We already had that debate. We should allow these initiatives to continue. Therefore, I am urging my colleagues to join me in voting against the Feinstein amendment.

There are a couple more issues I would like to cover. First, I ask unanimous consent that an op-ed by the Secretary of Energy, Spencer Abraham, from the Washington Post on Monday, July 21, 2003, be printed in the RECORD.

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

[From the Washington Post, July 21, 2003]

FACING A NEW NUCLEAR REALITY

(By Spencer Abraham)

The United States took another step toward eliminating the last vestiges of Cold War nuclear weapons production in May when the Department of Energy awarded contracts for construction of fossil fuel power plants to replace three Russian nuclear reactors. These reactors produce not only heat and electricity but also weapons-grade plutonium, enough to build 1½ nuclear weapons a day. When the new U.S.-financed power plants are constructed and the nuclear reactors shut down, weapons-grade plutonium will no longer be produced in Russia.

President Bush is deeply committed to reducing the number of our nation's strategic nuclear warheads by two-thirds, and to preventing nuclear and radiological materials from falling into the hand of terrorists. This $466 million project is the latest advancement in an aggressive nonproliferation effort that has expanded from $800 million to $1.3 billion per year since the president took office. That's why I was perplexed, during congressional debate on the defense budget by the hysterics over the $21 million that would allow our scientists to contemplate advanced weapons concepts that could be used to protect against 21st-century threats. (In all, some $6.4 billion in the budget is for Department of Energy nuclear weapons programs.)

This funding should not have surprised anyone. It is the logical result of early Bush administration initiatives, endorsed by Congress, to conduct a thorough review of the nation's nuclear weapons policy. That review determined that the 21st-century national security environment differs greatly from that of the past half-century.

Deterrence during the Cold War led to a predictable—if chilling—balance of terror that has now largely vanished. Henceforth threats will likely evolve more quickly and less predictably. It is a situation that demands the restoration of our capacity to meet new challenges.

Recently the United States has begun making great strides to rebuild those capabilities. Now, for the first time in more than a decade, we are able to manufacture a plutonium pit—also known as a trigger—an essential nuclear warhead component. The lack of this proficiency has seriously constrained our ability to maintain our nuclear stockpile. We have also launched a much-needed facility modernization program. But maintaining our capability to address 21st-century challenges requires more.

Should our scientists decide we cannot certify the reliability of our nuclear stockpile, we must be capable of conducting a nuclear test in a much shorter time frame than the current three years. The capacity to test within 18 months is a critical capability every president must have. We must also give our weapons scientists the resources and authority to explore advanced weapons concepts, including research related to low-yield weapons. Funding constraints and confusing legal prohibitions have stifled most new thinking on these issues. This has, in turn, made us less capable of devising the best responses to emerging threats.

The challenges posed by rogue nations or terrorists possessing weapons of mass destruction are strikingly different from that posed by the Soviet Union. Yet our best thinkers aren't being allowed to fully shift their focus from winning the Cold War to meeting new challenges.

Finally, we must move ahead to address one of the foremost military challenges identified in our recent review—an enemy using hardened, deeply buried facilities, to protect its weapons and other assets. We have just begun to explore whether modified existing warheads might be effective in attacking such targets. Similar analyses of the applicability of conventional weapons to addressing this threat are also being done.

We are not planning to resume testing; nor are we improving test readiness in order to develop new nuclear weapons. In fact, we are not planning to develop any new nuclear weapons at all. Our goal is designed to explore the full range of weapons concepts that could offer a credible deterrence and response to new and emerging threats as well as allow us to continue to assess the reliability of our stockpile without testing.

This is a sensible course that meets our national security requirements by restoring our capabilities and ensuring that we have the flexibility to respond quickly to any potential problems in the current stockpile, or to new threats that require immediate attention. Our policies are designed to strengthen the deterrent value of our nuclear weapons so that they don't ever have to be used.

Mr. ALLARD. Mr. President, I would like to briefly point out some of the things we had in the Defense authorization bill as it applied to a number of areas affecting nuclear weapons. The section that dealt with the developing low-yield nuclear weapon—section 3131 of the Defense authorization bill—repeals the ban on research and development of low-yield nuclear weapons. But that same section also includes a provision which states that nothing in this repeal should be ''construed as authorizing the testing, acquisition, or deployment of a low-yield nuclear weapon.''

Also included in that same provision is a section that limits DOE from beginning phase 3. Phase 3 is the full-scale engineering development or any subsequent phase of a low-yield nuclear weapon ''unless specifically authorized by the Congress.''

Finally, also in that same section 3131, a report is to be submitted to determine if the repeal of the ban on research and development of low-yield

nuclear weapons will affect the ability of the United States to achieve its nonproliferation objectives.

On that section of the Defense Authorization Act, we had a number of amendments that we considered on the floor which we have already voted on. Again, one was the Feinstein amendment. Senator FEINSTEIN offered an amendment to strike the repeal of the ban on low-yield nuclear weapons research. The motion to table was agreed to by a vote of 51 to 43. That was the Senate's position supporting the language of the Senate authorization bill on Armed Services.

The Reed-Levin amendment was also brought up in that section. They offered an amendment which retains the ban on low-yield nuclear weapon research. This amendment would retain the ban on phase 3 and subsequent phases but allow research on phases 1, 2, and 2A. This amendment was very similar to a House-Senate Armed Services Committee provision.

Chairman WARNER offered an amendment in the form of a substitute which struck the Reed-Levin amendment and added a limitation which required a specific authorization from the Congress before the Secretary of Energy can proceed with phase 3—which again is engineering development—or any subsequent phases of low-yield nuclear weapons. The Warner substitute passed by a vote of 59 to 38. The Reed-Levin amendment, as amended by the Warner substitute, passed by a vote of 96 to 0.

In another section in the Senate Armed Services Committee authorization bill dealing with the robust nuclear earth-penetrator—commonly referred to as RNEP—there was an authorization for $15 million for RNEP, which was the amount of the request we had in the budget proposal. That was section 1050.

Section 3135 also requires DOE to receive a specific authorization from Congress before commencing with phase 3 or any subsequent phase of the RNEP.

Time and time again, the Senate has spoken—that there will not be any further procedure on nuclear weapons development and advanced engineering unless there is specific authorization from the Senate.

Under the RNEP, there were a couple of Senate floor amendments that we considered. For example, Senator DORGAN offered an amendment to prohibit the use of funds for the nuclear earth-penetrator weapon, and the motion to table was agreed to by a vote of 56 to 41.

There was a Nelson amendment on RNEP. That amendment limited the DOE from beginning phase 3—full-scale development—or any subsequent phase of the robust nuclear earth-penetrator without a specific authorization from Congress.

Chairman WARNER prepared a very similar amendment, and the Nelson amendment was agreed to by a voice vote.

We have debated this issue thoroughly. The Senate has spoken on these amendments and on these provisions. The appropriators have language supporting what we have already voted on and what has been passed by this body. I think it is time to move forward.

I think it is important that we move forward with the appropriations bill in light of our energy needs in this country. We shouldn't delay.

I rise in support of the bill, and I rise in opposition to the Feinstein amendment and ask my colleagues to join me.

I yield the floor.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I thank the distinguished Senator from Colorado for his comments and overall summary of this situation. It has been extremely helpful. I am very grateful that he found time to do it today.

I understand that Senator BAYH desires to speak as if in morning business shortly with reference to the death of the Governor of his State. He is on his way. When he arrives, I will yield to him. He said he wanted 7 minutes.

Mr. BINGAMAN. Mr. President, I rise today to explain my reasons for supporting the Feinstein amendment. This amendment first and foremost seeks to reduce the funding for the robust nuclear earth penetrator, or RNEP. While on the Armed Services Committee, I took the lead on numerous occasions in opposing this program. I believe that it sends the wrong signal to other nations when we are proposing to expand our nuclear arsenal at the very same time we are trying to control the spread of weapons of mass destruction worldwide.

Further, this country clearly has superiority in advanced conventional weapons, as evidenced by the recent conflict in Iraq. Very few, if any, nations can compete with the U.S. in conventional weapons. We should be relying on this advantage in conventional weapons rather than forcing other nations to compete with us on nuclear weapons as we did before the end of the cold war.

There is also a pragmatic reason why I believe the RNEP is not needed. In my opinion, our existing arsenal, particularly the B–83 tactical nuclear bomb, is more than adequate to serve as a deterrent against the hardest underground targets that confront us today. The administration envisions the RNEP as a weapon that will destroy deep underground targets. Yet proponents of this argument seem not to have considered the loss of function to an underground target that a B–83, whose yield is in excess of 1 megaton, will cause. I am sure that after such a devastating explosion, very little, if any, of the deepest underground targets will pose much of a threat to the U.S.

Further, the amendment seeks to strike funding for the advanced concepts initiative. The administration claims that such funds are needed to keep our weapons scientists on the cutting edge of warhead design but they have not explained to us what avenues of research they wish to pursue. In my opinion, we barely know enough about modeling how our existing warheads function under the stockpile stewardship program. Our modern strategic warheads, such as the W–76 and W–88, are very complicated; modeling them challenges even the most advanced calculations on our laboratory supercomputers. There is no need at this time to embark on the new avenue of research in the advanced concepts initiative when we don't understand the science underlying the stockpile stewardship of our deployed arsenal. The advanced concepts initiative will be a dangerous distraction from the stockpile stewardship program.

The third provision of this amendment is somewhat more complicated. Let me begin by stating that I strongly support the construction of a modern pit facility as an integral component of the stockpile stewardship program. An earlier version of this amendment struck the funding for conceptual design work on this facility, which, in my opinion, was a mistake. I expressed my concerns to Senator FEINSTEIN, and I am pleased that this version of the amendment retains these conceptual designs funds.

There is a fundamental reason why I think the modern pit facility is important. Our pits are approaching ages in some cases of up to 35 years old. Our best scientists do not fully understand the way aging affects on these plutonium pits. At Los Alamos National Laboratory, we are just now at the stage where we can produce our first prototype test pit, 15 years after the Rocky Flats plant stopped production of these pits. But the Los Alamos facility cannot expand to handle the production that our stockpile may require 15 years from now.

With regard to siting the facility, I do not believe that we will have all the information we will need to do so by 2004. I have not seen any statements by the administration on what size the stockpile will be in 2012, when the Strategic Offensive Reduction Treaty reduces the stockpile down to 1200 to 1700 strategic weapons. I note that this treaty does not account for the deployed warheads found in gravity bombs. As a result of this lack of precision in future stockpile size, the DOE's Environmental Impact Statement gives production rates that range by a factor of four from 100 to 450 pits per year. Given that the stockpile size has not been decided at this time, and that the modern pit facility will not start operations until 2018, I cannot see how the Department of Energy can configure, much less site, their pit production facility in fiscal year 2004. I concur with Senator FEINSTEIN that the DOE can hold off siting the facility for a year, while continuing its design to

match the stockpile requirements from the Department of Defense.

I would like to note that I have advocated that if and when DOE justifies the facility's size, then Carlsbad, NM is the best location for it. Carlsbad's close proximity to Los Alamos National Laboratory means that the scientists who are researching the best ways to re-manufacture pits will be able to easily travel and impart that knowledge to the production plant. Carlsbad has a top-notch workforce at the Waste Isolation Pilot Plant well-trained for handling radioactive materials that will be essential to the pit facility. The Carlsbad community has shown strong support for the facility as well.

I support this amendment, but I also want to make clear that I also support the goal of constructing a modern pit facility, provided that they have a clear mandate from the Department of Defense on the facility's size based upon the stockpile, and we expect in 2018, when it begins operation.

Mr. LIEBERMAN. Mr. President, I stand today in support of my colleague Senator FEINSTEIN, and her amendment to strip the funding from the robust nuclear earth-penetrator and the advanced weapons concepts program, and to stop the enhancement of the time-to-test readiness at the Nevada Nuclear Test Site and the site selection of the modern pit facility. I fully support Senator FEINSTEIN's efforts to attempt to put an end to nuclear proposals that have not yet been justified by hard arguments but would likely result in adverse consequences.

Almost a decade ago, the United States, our allies, and the freedom-loving nations around the world rejoiced as the cold war ended peacefully and the threat of total nuclear annihilation was lifted. We dreamed then and we hope now that we will never again enter into a global struggle with thermonuclear consequences.

Yet there are those in this world who would still do us harm, and they are armed with weapons of mass destruction. To pretend otherwise would be to pander to a most dangerous delusion. There is a real danger that they seek to secure those weapons in hardened or deeply buried bunkers. We must put our best scientists to work to learn how to neutralize this threat.

At the same time, we must be careful that in seeking to neutralize this threat, we do not aggravate it by pursuing dangerously destabilizing policies and weapons programs.

As a member of the Senate Armed Services Committee, I have been briefed on our military's conventional and nuclear capabilities. Like most Americans, I have also watched with pride as our armed forces prove in Iraq and around the world that they are second to none. Based on these observations, I am convinced that we can and will meet the threat posed by our enemies without having to resort to developing nuclear weapons to destroy deeply buried or hardened targets at this time. To do so would be premature at best and dangerous and misguided at worst.

I am further convinced by the testimony and writings of experts, both those who have worn our Nation's uniform and those who did not, that not only is the utility of these nuclear weapons questionable, but so is the very fact of whether or not they will work as hoped.

Developing low-yield nuclear weapons at this time would also severely undermine our global nonproliferation efforts. I believe that at a time when the United States is seeking to convince the North Korean leadership that they do not need to engage in a brazen drive for a robust nuclear capability; at a time when our diplomats are trying to deescalate nuclear tensions along the Indian and Pakistani border; at a time when the International Atomic Energy Agency is presently engaged in negotiations with Iran over denuclearization and inspections, that we would be naive to think that we can coax these nations to drop their nuclear plans while we invest in pursuing our own new nuclear capabilities.

In addition to undermining our international nonproliferation efforts, a new generation of nuclear weapons, especially the low-yield variety envisioned by the administration, will blur the bright lines between conventional and nuclear capabilities, and raise the likelihood of resorting to the latter. I am not alone in this concern. Former Chairman of the Joint Chiefs of Staff General John Shalikashvili stated this concern clearly and persuasively: ''[a]ny activities that erode the firebreak between nuclear and conventional weapons or that encourage the use of nuclear weapons for purposes that are not strategic and deterrent in nature would undermine the advantage that we derive from overwhelming conventional superiority.''

The world we live in is indeed a dangerous place. In response to these dangers, however, we must guard against rash actions that undermine our ultimate security. The new nuclear weapons the administration advocates will not substantially increase our sense of security and may in fact detract from it.

Mr. LAUTENBERG. Mr. President, I rise today to support Senator FEINSTEIN's amendment to remove funding for the development of new nuclear weapons. The administration is seeking $15 million to fund more research on the robust nuclear earth penetrator a nuclear bunker buster and $6 million for research on new nuclear weapons.

I must register my shock that the administration has requested this funding, reversing almost 60 years of U.S. nuclear policy. Funding such a request is the first step on a ''slippery slope'' that could irreversibly lead us to testing and maybe even deploying these new nuclear weapons.

It is imperative that we nip this mischief in the bud by supporting Senator FEINSTEIN's amendment.

Let me remind my colleagues that the administration has consistently identified one distinct threat to U.S. security and reiterated this threat innumerable times in the past year: The proliferation of weapons of mass destruction and their transfer to terrorists.

In the President's speech to the United Nations on Sept. 12, 2002, in his address to Congress in October, 2002, in his State of the Union speech this past January, he repeatedly expressed his concern about the proliferation of biological, chemical, and especially nuclear weapons.

Many Members of Congress voted to send our young men and women to Iraq to eliminate the threat of Saddam Hussein's supposed nuclear arsenal. We were told that while Saddam had not yet developed nuclear weapons, he was actively intent on doing so and the consequences would be horrific.

Meanwhile, during this same year, the administration is looking to create new nuclear weapons.

Our diplomats have just returned from six-way talks in Beijing aimed at resolving the North Korean nuclear crisis instigated last fall when Kim Jong IL announced his defiance of the 1994 Agreed Framework. How can our negotiators in good faith reassure the North Koreans and the other participants at these talks of peaceful United States intentions in the region, while at home, in our labs, nuclear scientists are experimenting with new nuclear weapons that will eventually have a yield 70 times that of the bomb dropped at Hiroshima?

It is abundantly clear that there is a copycat effect of U.S. military planning. According to former Undersecretary of Energy, Rose Gottemoeller:

> Other countries watch us like a hawk. They are very, very attentive to what we do in the nuclear arena. I think people abroad will interpret this as an enthusiastic effort by the Bush administration to re-nuclearize. And I think definitely this nuclear funding is going to be an impetus to the development of nuclear weapons around the world.

I clearly remember the devastation that the atom bombs wrought not only on Hiroshima and Nagasaki, but on all society. As Adlai Stevenson put it, ''Man wrested from nature the power to make the world a desert.''

Since those two unforgettable days in 1945, administration after administration, Republicans and Democrats, have made it clear that nuclear weapons have held a special status within the U.S. arsenal. U.S. policymakers have committed to the international nuclear arms control regime.

The research funding in this bill for the nuclear earth penetrator departs from 60 years of nuclear policy. If these weapons are researched, they will be inevitably be tested, which will undermine a 10-year U.S. commitment to a nuclear testing moratorium.

I am deeply concerned about the standing of the United States in the international community.

As a result of the unilateral approach the Bush administration has taken in Iraq, we have lost friends, trust, respect and admiration in the global community. This new nuclear policy departure will only further erode U.S. leadership and esteem in the world.

I urge my colleagues to support this vital amendment.

Mr. BIDEN. Mr. President, I rise to support Senator FEINSTEIN's amendment to strike funding allocations for certain nuclear weapons research and development activities contained in H.R. 2754 the energy and water appropriations bill. Before I discuss the particulars of this amendment, let me explain why it matters so very much in the context of the international environment in coming decades.

Today, the United States is the preeminent conventional superpower in the world. We spend more on our Nation's military than the rest of the world combined. As the dazzling display of firepower exhibited by our troops in Afghanistan and Iraq demonstrates, our Nation boasts the mightiest military machine in world history.

But none of that means our Nation is secure or can afford to rest on its laurels. As September 11 graphically exhibited, the world is a very dangerous place, if only because our adversaries and rivals are turning to asymmetric warfare to nullify our military advantages and exploit our weaknesses. One key asymmetry lies in the use of weapons of mass destruction. The spread of technology around the world allows a greater number of states and non-state actors to access the knowledge, technology, and infrastructure required to develop and produce nuclear, chemical, and biological weapons.

Nuclear weapons, in particular, can nullify the overwhelming conventional military strength of the United States. Today no weapons system can defend against the detonation of a nuclear weapon in an American city. National missile defense holds out the prospect one day of preventing the delivery of nuclear weapons via intercontinental ballistic missiles, but the technology is so premature that any effective system is years, if not decades, away. Indeed, a terrorist is unlikely to use an ICBM with a return address. And there is absolutely no system that can prevent a barge from sailing into New York City's harbor and detonating a nuclear explosive on board.

So nuclear proliferation represents the gravest threat today to our national security, a threat from which our overwhelming conventional military strength provides little protection. How do we best respond to this threat? One school calls for the development of new nuclear weapons for possible use in an otherwise nonnuclear conflict. In order to ensure that a North Korea or an Iran cannot secure its chemical and biological weapons or hide its leaders in underground bunkers, some people call for new nuclear weapons capable of penetrating layers of earth and destroying deeply buried targets.

Advocates of new nuclear weapons go off the deep end, however, when they suggest that low-yield weapons could ever destroy deeply buried targets, or that a ''bunker-busting'' weapons would not cause horrific civilian casualties. The laws of physics dictate that a warhead cannot penetrate more than 50 feet of dry rock before gravitational forces cause the warhead to break up. That means that a nuclear weapon big enough to destroy a deeply buried target—even a target 100 feet below ground—cannot be ''low-yield''. Any low-yield weapon would simply lack the explosive power necessary to destroy a target buried at that depth or lower. So the nuclear weapons designers tell us explicitly: A Robust Nuclear Earth Penetrator will never be a low-yield weapon.

But what would happen if a low-yield weapon were used against a buried target? According to the physicist Sidney Drell, a one-kiloton nuclear weapon, well below the 5-kiloton threshold below which nuclear weapons are called ''low-yield'', detonating at a depth of 40 feet below the surface would still create a crater larger than the entire World Trade Center impact zone and churn up about 1 million cubic feet of radioactive material into the air. This very small one-kiloton nuclear weapon would wreak tremendous damage, contaminating the surrounding area for miles on end with dangerous gamma rays and other radiation. This reality is vastly different from the image of a surgical weapon promoted so often by its advocates.

Advocates of low-yield nuclear weapons are trying to have it both ways. They want a weapon powerful enough to take out bunkers, neutralizing any stored chemical and biological agents, that are buried deeply below the Earth's surface. At the same time, these weapons must be small enough to minimize civilian casualties and destruction on the surface. Unfortunately, scientists and weapons designers say it just can't be done.

Weapons designers will tell you that the real purpose for low-yield nuclear weapons is not to strike underground targets when all other options have failed. Rather, these weapons could strike regular surface targets like leadership compounds—while reducing the damage that a more regular-sized nuclear weapons would cause. But that resurrects the misguided strategic concept that nuclear weapons are just handy tools, like any other weapon—a bizarre notion that should have expired along with Dr. Strangelove decades ago. Besides, low-yield weapons are nothing new. Every time we developed them, however, the military concluded that they weren't worth the effort.

Any deterrence benefits that new low-yield nuclear weapons would provide are far outweighed by both the risk that they will actually be used and the dangerous signal that they send to other countries—intentionally or not—that we intend to fight nuclear wars. Low-yield weapons, in particular, blur the traditional firewall between nuclear and conventional war. The sidestep the fact that a nuclear weapon is a weapon of a wholly different order and magnitude from any other weapon in existence today—something that any sane and rational society would only use as a truly last resort. As Hiroshima and Nagasaki demonstrated in 1945, even crude nuclear weapons are city-killers.

Let me point out one final challenge to the possible use of low-yield nuclear weapons to strike deeply buried targets. Any decision to order such a strike must rely upon unimpeachable intelligence, because no rational President will order even a low-yield nuclear weapons like without great confidence in the success of the mission. It is precisely that type of intelligence which is so difficult to obtain when it comes to acquiring information on the location of WMD stockpiles and leadership compounds in rogue states. Just look at what happened during the war on Iraq this spring. Twice, we thought we had Saddam in our sights. Our intelligence folks told the President they had good information that Saddam was in a particular location at a given time—but in both cases they were wrong. Saddam either was never there or had left before the bombs arrived. And as for taking out Saddam's chemical or biological weapons, ''all the king's horses and all the king's men'' will get back to us later.

I'm not casting blame on our intelligence community—it is an incredible challenge to gain real-time tactical information in the heat of battle. But imagine the international outcry had the United States used a low-yield nuclear weapons to go after Saddam. Not only would we have failed to kill him because he was not in the bunker, we would have caused incalculable civilian casualties, razed a large part of Baghdad, and breached the nuclear threshold.

Is this a price any future Commander in Chief would or should be willing to pay? Our enemies are not stupid—they will increasingly locate valuable targets near or next to civilian sites, such as mosques and hospitals. They may will bury deeply hidden bunkers under these sites. Again, should any President give the OK to use a low-yield nuclear weapon under such circumstances? If not, why incur the fiscal expense, diplomatic costs, and strategic risks of developing these new weapons in the first place? Why give other countries the sense that nuclear weapons are a vital element in our warfighting plans, when there would still be no rational reason for us to use them except in retaliation?

So what's the right response to the world we live in today, where nuclear

proliferation poses the greatest security threat we face? I wish I could offer you one simple solution that will effectively answer this challenge. Unfortunately, no such magic bullet exists. Instead, we need to rely on a shrewd combination of accurate intelligence, diplomacy, multilateral cooperation, arms control, export controls, interdiction, sanctions, and when appropriate, the threat or use of military force, to deter and prevent the spread of nuclear weapons.

In those situations where we must target deeply buried targets, conventional weapons offer a promising alternative to introducing nuclear weapons into the conflict. After all, chemical or biological weapons stored in an underground site can do no harm as long as they remain within that bunker. And an earth-penetrating nuclear weapon could spread far more chemical or biological agents than it burned up, unless it landed very precisely on the target. So our military could employ large conventional bombs to seal or destroy the entrance and exit tunnels to underground sites, so that any weapons stockpiles stored in such sites will not be going anywhere for a while.

Other scientists have discussed the feasibility of targeting a series of conventional missiles, one following the other, in order to burrow a ''pilot hole'' toward a deeply buried target. So let's be clear—nuclear weapons are not the only possible solution for attacking an underground target.

The neoconservative school argues that diplomacy, arms control, and international ''norms' have failed to deter rogue states like Iran and North Korea from developing nuclear weapons programs. There may be some truth to that, but diplomacy has been instrumental in slowing down the progress of these programs and restraining their scope. In addition, nonproliferation regimes and international norms have provided tremendous value in convincing more established states in the international system to remain non-nuclear. For example, it was their desire for international legitimacy which, in part, persuaded Argentina and Brazil to give up their nascent nuclear weapons programs in the 1980's. The same can be said for Japan, Taiwan, the Ukraine, and South Africa, which have all foregone, halted, or voluntarily given up their own nuclear weapons programs.

How does the Feinstein amendment fit into this broader discussion over U.S. nuclear weapons strategy and the battle to combat nuclear proliferation? The energy and water appropriations bill includes the administration's original requests for funding of a series of controversial nuclear weapons activities, including research into advanced nuclear concepts, such as low-yield weapons, and reduction of the time period between when a President makes the decision to resume nuclear testing and when our nuclear weapons complex would be able to carry out a test.

This new funding to enhance our readiness to resume nuclear weapons testing and conduct research on new weapons concepts and designs will lead us to a world where the further proliferation of nuclear weapons is more widely tolerated. While the senior officials in the current administration have disavowed any intent to resume nuclear testing or produce new nuclear weapons, their actions tell a different story.

The Nuclear Posture Review of December 2001 identified not only Russia and China as potential targets in a future nuclear war, but also North Korea, Iran, Syria, and Libya. The latter countries were cited as seeking weapons of mass destruction, but not necessarily nuclear weapons.

More recently, civilian Pentagon leaders ordered a task force to consider possible requirements for new low-yield nuclear weapons, even while assuring the Senate that no formal requirement has yet been established.

A presidential strategy document reportedly stated that the United States might use nuclear weapons against a non-nuclear state possessing chemical or biological weapons.

Senior officials publicly discuss the possible need to resume underground nuclear testing, either to ensure that existing weapons are safe and reliable or to test new weapons, all the while scorning the Comprehensive Test Ban Treaty.

The Feinstein amendment would strike out the $15 million allocation for the Robust Nuclear Earth Penetrator, eliminate the $6 million allocation for Advanced Weapons Concepts Initiative and prohibit the use of any appropriated funds to shorten the time period required to prepare for an underground nuclear test from the current 24 to 36 months to less than 24 months.

It would also prohibit the use of funds for site selection or conceptual design of a Modern Pit Facility, which would produce replacement plutonium triggers for the existing nuclear stockpile. The amendment reallocates the eliminated funding to the paramount goal of deficit reduction.

Let me remind my colleagues that this amendment only proposes to do what the Republican-controlled House largely already did in July, when it adopted its version of the Energy and Water appropriations bill. According to press reports, Representative DAVID HOBSON, the Republican chairman of the relevant House Appropriations subcommittee, defended his panel's decision to strike this funding by asserting the U.S. Government should first address the rising costs of managing its existing nuclear stockpile and disposing of its nuclear waste before moving ahead with new nuclear programs. Neither the full House Appropriations Committee nor the House as a whole challenged the subcommittee's mark.

We should all remember the House's actions when our opponents charge that this amendment will jeopardize U.S. national security or represents some extremist, antinuclear weapons agenda. In fact, the opposite is true.

So what's the bottom line here? Today, the United States deploys 6,000 strategic nuclear warheads and possesses in total more than 10,000 deployed or reserve nuclear weapons. As we are the overwhelming conventional military power in the world, it is decidedly against our interest to see others obtain and/or use nuclear weapons. Why on earth, then, are we considering the acquisition of additional and more advanced nuclear weapons?

If we continue on these steps to develop these new weapons, our friends and enemies alike can easily dismiss our future admonitions on why nuclear weapons fail to provide true security. Indeed, our adversaries will take to heart one overriding lesson: Develop your own nuclear weapons to deter a preemptive U.S. strike.

Let me close with a statement by Secretary of State Colin Powell, a man who spent the majority of his career in the uniformed military. In May 2002, Secretary Powell discussed the potential for an India-Pakistan conflict to evolve into a nuclear clash. But his larger point holds true for our debate today:

> Nuclear weapons in this day and age may serve some deterrent effect, and so be it, but to think of using them as just another weapon in what might start out as a conventional conflict in this day and age seems to be something that no side should be contemplating.

The Feinstein amendment enhances U.S. national security by preventing our Nation from sleepwalking into an era when nuclear weapons are considered just another weapon. The United States is the leader of the world. Other nations watch us and they follow our lead. Let's not lead them astray.

Mr. AKAKA. Mr. President, I rise today to comment on the debate over funding for the administration's request for studying new nuclear weapons in the Energy and Water Development Appropriations bill.

The administration proposes that Congress fund the study of two new nuclear weapons: a robust nuclear earth penetrator, RNEP, and a low yield nuclear weapon.

Why does the United States need these new nuclear weapons?

The administration's case for these new nuclear weapons presumes that deterrence may not be working well in the post-cold war security environment. Leaders of rogue states may conclude that the United States cannot attack their deep bunkers or weapons of mass destruction, WMD, and so act or use their WMD with impunity. These new nuclear weapons supposedly will bolster the U.S. deterrent.

But does our nuclear arsenal no longer deter?

Deterrence involves credibly threatening an enemy to deter them from taking unwanted actions. It involves having the forces to fulfill the threat

and the resolve to carry out the threat. We have enough nuclear weapons to accomplish this goal. Over a decade after the end of the cold war we possess an arsenal that could still end life on earth as we know it. This massive destructive power should give pause to any nation or dictator that wants to attack the United States with nuclear weapons.

While the Congress was on recess, the annual remembrance of the bombings of Hiroshima and Nagasaki and the end of World War II passed. On August 6, 1945, the United States dropped the first atomic bomb on Hiroshima. Three days later another was dropped on Nagasaki. Shortly thereafter Japan surrendered, ending World War II.

The Hiroshima bomb had an explosive power of 15 kilotons of TNT and killed almost 70,000 people immediately and injured as many more. The Nagasaki bomb was 22 kilotons and killed 40,000 people and injured another 25,000. There had been devastating conventional bombing attacks during World War II. The fire bombings of Dresden and Tokyo also caused widespread damage and loss of life. But the realization that one plane with one bomb could destroy a city was a new and fearsome development.

After the end of World War II and the onset of the cold war, the U.S. arsenal expanded rapidly. By 1960, more than ten thousand nuclear weapons were in the U.S. arsenal. Weapons had expanded from kiloton to megaton size. The U.S. arsenal grew to have 20,500 megatons of TNT explosive power.

A megaton is an enormous amount of destructive power. A kiloton is a thousand tons. A megaton is a million tons. In 1960, the U.S. arsenal had almost seven tons of TNT of explosive power for every one of the three billion men, women and children on the planet.

The massive overkill of the U.S. arsenal, like its Soviet counterpart, has declined since the 1960s. The United States still keeps thousands of nuclear weapons. But the average explosive power of a U.S. nuclear weapons has decreased. As a result the U.S. arsenal today contains only some 1,200 megatons of explosive power. Still enough, however, for 400 lbs. for every person on Earth.

Some advocates of small nuclear weapons claim massive firepower is a poor deterrent. They argue that the United States would not use a large nuclear weapon for a limited strike. They further argue that smaller, more usable nuclear weapons will be a more credible deterrent because rogue state leaders will believe the United States could use them. The administration proposes to investigate the possibilities of a new nuclear weapon with a yield of less than five kilotons to meet this goal.

Five kilotons is one third the size of the Hiroshima bomb. It is not a low-yield weapon. It is equivalent to 5,000 tons of ten million pounds of TNT. Yet, the use of such new lower yield nuclear weapons is incredible because it is impractical and there are conventional weapons that can or will be able to do the job. We are told there are dozens if not hundreds of buried hardened targets. Without excellent intelligence on where WMD or rogue leaders may be hidden, the United States would need to drop dozens or hundreds of nuclear weapons. The radioactive fallout from such a strike would be large. The international political fallout would be massive and so would be the international environmental effects.

The U.S. nuclear arsenal is currently diverse and flexible. the United States in fact already possesses such low-yield nuclear weapons. I asked Secretary of Energy Spencer Abraham for the record when he was before the Senate Armed Services Committee this spring if the United States had operational nuclear weapons that could have yields of less than five kilotons. Secretary Abraham's unclassified written response was that, ''The U.S. has two existing nuclear weapons that have certified yields of less than five kilotons.''

As for the robust nuclear earth penetrator, we already have one of these as well. As has been well publicized, in the mid-1990's, the United States deployed the B61–11 bomb for an earth penetrating mission.

The administration claims the B61–11 is no longer adequate for the job. Energy Department officials informed congressional staff in an unclassified briefing that the B61–11 was designed not to penetrate rock but to attack only certain targets in hard or frozen soil in Russia. It is not able to counter targets deeply buried under granite rock. Moreover, it has a high yield, in the hundreds of kilotons. If used in North Korea, the radioactive fall out could drift over nearby countries such as Japan.

Is the solution to a seeming limitation to the B61–11 exploring yet more and more nuclear weapon designs? This search for a perfect nuclear deterrent reminds me of the mad logic of the cold war where the United States and Soviet Union pursued more and more nuclear weapons of more and more sophisticated designs to try to cover more and more contingencies. These endless improvements are unnecessary, expensive and dangerous.

For example, some argue using new small penetrator nuclear weapons is preferable to using conventional weapons for attacking buried chemical or biological weapons. They hope that a nuclear weapon would incinerate hidden weapons. However, calculations by Princeton physicist Robert Nelson indicate that, unless the strike is extraordinarily precise, the blast from a nuclear weapon has as good a chance of dispersing buried agents as destroying them. Our conventional forces can also attack or disable deeply buried targets. They will continue to improve in effectiveness and lethality. We should focus on improving their capability, not chasing some nuclear will o' the wisp.

The $21 million for the RNEP and advanced weapons concepts, including the low-yield nuclear weapons, in the fiscal year 2003 budget could be better spent elsewhere to guard us against real nuclear threats. There is widespread agreement that al Qaeda or other terrorist groups would make use of a dirty bomb if they could get hold of radioactive materials. I have released three General Accounting Office reports this year that show the United States and international controls over radioactive sealed sources that could be used in a dirty bomb are severely lacking. The Energy Department could better spend the funds being proposed for new nuclear weapons on improving the tracking and security of dangerous radioactive sources here and abroad.

Pursuing new nuclear weapons will undermine our non-proliferation goals. The example we set for the rest of the world does matter. Getting the world's approval for the indefinite extension of the Nuclear Non Proliferation Treaty in 1995 was dependent on the United States and the other nuclear powers signaling they would rapidly negotiate a comprehensive Nuclear Test Ban Treaty, CTBT.

The United States and Russian decision to stop nuclear testing in the lead up to the CTBT talks put pressure on France and China to end their nuclear test programs in the 1990's. Had the United States and the other nuclear powers not stopped nuclear testing it would have been even more difficult to pressure Pakistan and India to put a quick to their nuclear tests. It would be even harder to put pressure on North Korea today.

Getting the world to continue to help us to pressure North Korea and Iran will be more complicated if the United States weakens its commitments to non-proliferation. In early September, Russia complained that several states' failure to ratify the CTBT is delaying its entry into force at an international conference convened to look at this question. This controversy over the U.S. non-proliferation policy is not welcome news when the administration is now seeking support to condemn Iran's nuclear program at an upcoming IAEA meeting. News reports indicate that the United States will have a hard time doing this as Iran has more allies on the IAEA's board than does the United States.

The non-proliferation regime, laboriously constructed by the United States and the international community over 30 years, has been a success. Rather than having dozens of countries with nuclear weapons, we confront a few, final, hard cases that have been a problem for many years but whose time is running out. New nuclear weapons are not the way to address the challenges these nations pose.

Rather, a diplomacy of engagement, building the support of the international community, and maintaining our strong alliance commitments and conventional forces is the way forward.

The administration is learning that force and confrontation are not a solution to the non-proliferation problem. Saddam Hussein's weapon of mass destruction program was not an imminent threat. Continued inspections and indefinite monitoring which were envisioned under the U.N. resolutions would have contained his program. Confrontation with North Korea has led to an acceleration of the North Korean nuclear program not its demise. Now the administration must negotiate seriously with North Korea to bring and end to the crisis and create a new security regime in the Northeast Pacific.

The administration should understand more and more types of nuclear weapons will not guarantee deterrence, prevent the proliferation of WMD, prevent war or conflict. In fact, during the cold war we found our ever increasing nuclear arsenal could not achieve these goals. Paranoid, pygmy or pariah states, as Professor Richard Betts once characterized them, sought nuclear weapons for their defense due to their imagined or justified fears, their perceived conventional weaknesses, or because of their outcast status. Nuclear weapons did not prevent the Korean war, the Vietnam war, the Arab-Israeli wars, or the Soviet invasion of Afghanistan.

Deterrence has many components: nuclear forces, conventional forces, strong alliances, a strong economy, and a strong resolve among them. At this moment in history we need an intelligent diplomacy, strengthened alliances and capable conventional forces more than we need more and new types of nuclear weapons.

We have enough nuclear weapons to maintain nuclear deterrence. If anything, we should be seeking ways to further reduce ours and other countries' nuclear arsenals, not add to them. Talk to the contrary by promoters of new nuclear weapons misrepresents the strength of our existing forces and our resolve. We are sending the wrong message about our military strength.

I urge my colleagues to reject funding for these new nuclear weapon designs.

I urge my colleagues to vote for Senator FEINSTEIN's amendment.

Mr. DOMENICI. Mr. President, if I might have the attention of Senator REID, it has come to my attention, for a reason involving an individual Senator, that it would be more accommodating if we started our vote at 2:45. Does the Senator have any objection to that?

Mr. REID. I modify the request that the time between 2:15 and 2:45 be equally divided between both sides, Senator DOMENICI controlling 15 minutes and Senator FEINSTEIN controlling 15 minutes.

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

Mr. DOMENICI. I indicate to the Senate that we will have a few minutes before the vote. I will summarize again and we will have handouts if anyone needs to know what this Senator thinks the issues we will vote on are.

In summary, No. 1, there is no authorization to build any new nuclear weapons. We are building none now. We have not built any for a long period of time.

No. 2, a portion of this bill says the Nevada Test Site will be made ready so it can be used in 18 months rather than 3 years. Almost everyone knowledgeable in the field thinks it is high time that happened.

No. 3, there is a small amount of money to begin planning, designing and feasibility, for a pit manufacturing facility. We are the only nation with nuclear weapons which has no spare pits, plutonium pits, the essential ingredient. We have tried to make them in Los Alamos. It is makeshift and it has been very expensive.

It is clearly indicated for the next 40 or 50 years we need to build a facility. This bill provides a start on that long-term effort.

Not yet have I said anything about new weapons or America engaging in a new course of conduct with respect to nuclear energy. That is not happening.

Next, the bill says, do not tie the hands of our great scientists with reference to the future. Let them study, let them think, let them design, but do not let anyone build any new weapons. Let them think about the future and what might be needed in light of the changed circumstances in the world. It is very prudent to do that.

In all three regards, there are clear cases the Feinstein amendment should fail. I hope it does so we can proceed ahead with these things that are necessary.

I yield whatever time the distinguished Senator from Indiana needs. I share my grave concern and condolences over the death of his esteemed Governor.

I yield the floor.

TRIBUTE TO GOVERNOR FRANK O'BANNON

Mr. BAYH. I thank my colleague from New Mexico, and I thank all Members of this body.

It is with a sense of melancholy but also gratitude that I rise today to celebrate the life of Frank O'Bannon. He died as he lived, in service to the people of the State of Indiana.

Frank O'Bannon was my friend and spent the best years of his life in public service: 18 years following in the footsteps of his father in the Indiana State Senate where he served as the leader of the Democratic Party; 8 years as lieutenant governor where we enjoyed a seamless partnership working on behalf of the people of our State, always a source of wise counsel, support, and encouragement; in these last 7 years, working on behalf of the people as Governor of the State of Indiana.

His accomplishments were many and will be everlasting in memory. His devotion to education was second to none. He fought for higher academic standards, a system of assessments to determine how children are doing toward meeting those standards, and taking aggressive steps to ensure that every child across our State would have access to the skills necessary to make the most of their God-given abilities.

He worked tirelessly first as lieutenant governor and then as Governor on behalf of a better economy, more job opportunities for the people of Indiana. Particularly during these recent difficult years he doubled his efforts to ensure that our State would be competitive with not only our neighboring States but also with those with which we compete from abroad.

Frank O'Bannon cared about a better quality of life for all Hoosiers. He work tirelessly for better health care for the citizens of our State, particularly for the young. I am so very proud the State of Indiana ranks at the top in the country in terms of how we have used the new CHIP Program to extend health care benefits to disadvantaged children across our State. I was privileged to work with him in my capacity in the Senate to ensure our State continued to receive full funding for our efforts.

Frank O'Bannon had many other important contributions in his legacy. Most recently I had a chance to visit the new White River State Park in Indianapolis and the magnificent Historical Society Center in Indianapolis where he hosted, along with our first lady, Judy O'Bannon, the other Governors from across the country to showcase the magnificent place that Indianapolis has become. The Historical Society was a wonderful setting for the Governors. We had a chance to display the finest of Hoosier heritage for the entire country.

The White River State Park will be a magnificent urban park attracting not only tourists from across the State but also business and industry as leaders of finance seek a better quality of life for their employees. His contributions to that effort were substantial, as well.

I believe Frank O'Bannon was a special man not for his material accomplishments but instead for the kind of man he was. There is an old saying that character is destiny. I believe that is true. Therefore, it is no wonder that Frank O'Bannon accomplished so much. He was a man of true and outstanding character, indeed. In all my years of association with him I never once saw him do something that was mean or petty. He understood very well that it is far better to be loved than feared. Even more, I always saw him place self-interest behind the public good, truly remarkable during an age of cynicism and skepticism about those in public life.

There is an old proverb that says the definition of a statesman is someone who plants a tree in whose shade he will never rest. Seedlings have been

planted across our State that will grow into strong oaks under which future generations will rest with ease, more secure because of the work and the legacy of Governor O'Bannon. He was a statesman, indeed.

A calling characterized all too frequently by ego and hubris, Frank O'Bannon was always humble, gentle, giving credit to others, even when he deserved the lion's share. One of his favorite pastimes was to go to his cabin in Harrison County in southern Indiana to commune with nature and watch the wildlife and experience Mother Nature. That is where Frank and Judy O'Bannon were most at home. That speaks volumes about his character, as well.

Let me say a word, too, about Judy. She was an exemplary first lady, leading our State in the celebration of the recent millennium, always concerned that our history and culture never be lost, always reaching out to those in need. She is generous of spirit. I hope her contributions to our State will continue for many, many years to come. Judy O'Bannon has done the people of our State proud.

So today, my colleagues and Mr. President, we mourn, but we can take comfort in the knowledge that our loss has been Heaven's gain, that the life and legacy of Frank O'Bannon will not end with our grieving or with my few inadequate words but will remain everlasting in the hearts of Hoosiers everywhere as long as we can still recall what makes our State such a special place.

I thank my friends and I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, I think a recess is coming; is that correct?

The PRESIDING OFFICER. That is correct.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2004—Continued

Mr. GRAHAM of South Carolina. Mr. President, I ask unanimous consent, despite the recess, to be able to speak 3 minutes in opposition to Senator FEINSTEIN's amendment.

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

The Senator from South Carolina is recognized.

Mr. GRAHAM of South Carolina. Mr. President, I rise in opposition to Senator FEINSTEIN's amendment, certainly not in opposition to her. She is one of my closest friends in the Senate, and I admire her greatly. We just simply disagree on this particular amendment.

Of all the debates we are going to have in the coming months, I think this is one of the most important. The amendment would prohibit the Department of Defense and the Department of Energy from pursuing an advanced concept and research design to transform some current inventories of nuclear weapons, to be able to do something they cannot do today; that is, to penetrate hardened sites to counter the war on terrorism.

The war on terrorism is like every other war in many ways. The people we are fighting have the same hopes and aspirations as the people who fought in World War II. In Hitler's world, if you were not of a certain ethnic makeup, you could lose your life. And in Hitler's world, there was total obedience to the state. And the Japanese empire had a very intolerant view of the people who were different and disagreed.

The idea that one particular group wants to shape the world in a very harsh fashion has been with us as long as time itself. And in the terrorist world, young girls don't go to school. In their world, there is one way to worship God. It is their way. If you choose to do it some other way, you could lose your life.

So the basic concepts of the war on terrorism are very old. But the way we fight this war is going to take some adapting. The group that wins the war on terrorism will be the group that was able to adapt the best.

Here is what I see coming down the road for the American military, for American policymakers. The terrorist organizations that perpetrated 9/11 and that we are pursuing all over the world today do not have navies and armies, and they do not have a nuclear force as we faced in the former Soviet Union. But they have a desire, unequaled by anybody, to build a nuclear weapon, to acquire chemical and biological weapons. Their desire is great. Their commitment to use it is unquestioned.

Let it be said, without any doubt, if they could get a nuclear weapon, they would use it. If they could get chemical or biological weapons that would hurt millions of Americans or people who believe in freedom, they would use it.

The only way they are not going to use it is to make sure they don't get it. And the best way to make sure they don't get it is to bring them to justice, and to end their ability to finance terrorist activities, to organize, and to project force.

I can foresee in the near future, not the distant future, that terrorist cells will reorganize. They will use some remote part of the world to form their plans, to plot and scheme, and maybe to actually manufacture—some remote part of the world that is very well guarded and not subject to conventional attacks, in a part of the world where it would be hard to get conventional forces to neutralize the terrorist threat. I see that as a very real possibility in the coming decades, in the coming years, maybe even the coming months.

The legislation we have before us would take off the table our ability to adapt our nuclear deterrent force to meet that threat. Look how much money we spent during the cold war to neutralize the Soviet threat—the Star Wars programs and other ideas that made it very difficult for our enemy at the time to keep pace. It is one of the reasons the world is safer today, because we were able to adapt.

We took our nuclear programs, not to use the weapons, but to prevent those weapons from being used against us. We adapted our nuclear force in a way that eventually won the cold war.

I think that same scenario exists today. We should have on the table the ability of the great minds in this country to adapt, if necessary. And there is nothing in this proposal by the administration to build a weapon. It is to look at our current inventory and see if it can be adapted to a real threat.

I admire Senator FEINSTEIN, but I think her amendment would do a great injustice to the future policymakers and the military men and women of the future when it comes to fighting the war on terrorism because this war has just started. It is not anywhere near over. The major players are still alive, but they are trying to get people to follow in their footsteps. So we are going to be in this war for a long time.

The question before the Senate and before the country is, If we knew that bin Laden, or someone like him, was in some mountain fortress in Afghanistan or some other country, on the verge, within that fortress, of developing a nuclear, chemical, or biological weapon, what would we do to stop it?

I think we should do everything we can to stop it. And the idea of being able to use a redesigned nuclear weapon to keep a terrorist from hitting us with a nuclear weapon is something that we have to come to grips with because it is part of the war on terrorism.

So I hope the Senate will reject Senator FEINSTEIN's efforts to stop this inquiry because this is an inquiry that needs to be made sooner rather than later. I think the Bush administration is on the right course and the right path in taking the great minds of our time and letting them adapt our nuclear force to the coming threats because the coming threats are not from the Soviet bloc countries; they are going to be our allies. The coming threats are from people who hide in faraway places, deep in the bowels of the earth, with great hatred in their hearts.

We need to meet that threat. So I ask each Member of the Senate to dig within their heart and to make sure their vote does not take an option off the table that may well save this country from something we never experienced: a major nuclear, chemical, or biological attack.

Mr. President, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:36 p.m., recessed until 2 p.m. and reassembled when called to order by the Presiding Officer (Mr. TALENT).

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2004—Continued

Mr. REID. Mr. President, I expected Senator DOMENICI to be in the Chamber. We have a couple of amendments we wanted to clear before the vote began, but he is not present. So Senator FEINSTEIN should go ahead and start her debate if she cares to.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I ask the minority whip how much time I have.

Mr. REID. Before I respond, Senator DOMENICI is present and we will be happy to extend the time of the Senator if we need to.

AMENDMENTS NOS. 1665, 1666, 1667, AND 1668 EN BLOC

Mr. REID. Senator DOMENICI and I have been working on a number of issues. I send a series of four amendments to the desk and ask that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes amendments numbered 1665, 1666, 1667, and 1668 en bloc.

Mr. REID. Mr. President, I ask unanimous consent that the reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 1665

At the appropriate place insert the following:

WORKING CAPITAL FUND

(RESCISSION)

From unobligated balances under this heading $4,525,000 are rescinded.

AMENDMENT NO. 1666

On page 32, line 10 strike ''853,517,000'' and insert in lieu thereof ''859,517,000''.

AMENDMENT NO. 1667

At the appropriate place insert the following:

SEC. . That of the funds provided, an additional $3,000,000 shall be available for the Middle Rio Grande, NM project and an additional $3,000,000 shall be available for the Lake Tahoe Regional Wetlands Development project.

AMENDMENT NO. 1668

On page 33, at the end of line 12 insert the following:

''BUREAU OF RECLAMATION LOAN PROGRAM ACCOUNT

For administrative expenses necessary to carry out the program for direct loans and/or grants, $200,000, to remain available until expended, of which the amount that can be financed by the Reclamation Fund shall be derived from that fund.''

Mr. REID. Mr. President, our staff has worked on these amendments during the last several days. I ask they be agreed to en bloc.

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

The amendments (Nos. 1665 through 1668) en bloc were agreed to.

Mr. REID. I ask that the Senator from California be given an extra minute from the time we just took.

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

The Senator from California.

AMENDMENT NO. 1655

Mrs. FEINSTEIN. Mr. President, I ask the Chair to let me know when 7 minutes have expired so I can defer to my cosponsor, Senator KENNEDY.

The PRESIDING OFFICER. The Chair will inform the Senator.

Mrs. FEINSTEIN. Mr. President, I also ask unanimous consent that the names of Senators JOHNSON, MURRAY, CLINTON, and ROCKEFELLER be added to our amendment as cosponsors.

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

Mrs. FEINSTEIN. Mr. President, yesterday Senator KENNEDY and I came to the floor and we spent some time arguing on behalf of an amendment to this bill which contained language similar to what was recently past by a large majority in the House of Representatives. The bill passed by the House of Representatives struck the language that appropriates funds to begin a new generation of nuclear weapons.

Now, there are some on the other side who say, and continue to say, this is just a study; there is no development. I believe that is not the case. Let me connect the dots for you.

In January of 2002, the administration put forward a Nuclear Posture Review which advocates the development of new types of nuclear weapons. Later that year, the President signed National Security Directive 17, indicating that the United States might use nuclear weapons first to respond to a chemical or biological attack.

Earlier this year, a decade-old prohibition on the development of low-yield nuclear weapons was rescinded in the Defense authorization bill. For 10 years, this kind of thing was prohibited. That prohibition, known as the Spratt-Furse amendment, was repealed earlier this year.

This spring a statement of administration policy for the Defense authorization bill clearly included support for the research and development of low-yield nuclear weapons.

In this bill the Senate is being asked to provide the dollars to begin this effort—$15 million for the study of a robust nuclear earth penetrator. We are talking in excess of 100 kilotons; $6 million for advanced concepts research, including low-yield weapons; funding for enhanced test site readiness; and a huge new $4 billion plutonium pit facility—all of this when we are already spending $2.3 billion for a Los Alamos facility that can provide replacement for the U.S. nuclear stockpile.

We are strongly opposed to America beginning a new generation of nuclear weapons. We are opposed to it for two reasons: No. 1, the low-yield nuclear weapon—under 5 kilotons—essentially begins to blur the use between conventional and nuclear weapons, therefore making it easier to use. And, No. 2, because the world will watch this and the world will respond. The way in which they will respond is with a new nuclear arms race.

If the United States begins to develop tactical, battlefield nuclear weapons, how long will it take for two indigenous nuclear powers, namely India and Pakistan, arch enemies, to say we should do the same thing. How long will it take for North Korea or Iran or any other nation that so seeks to begin such a similar program?

As many internationally have said: America preaches nonproliferation, and then it goes ahead and develops new nuclear weapons.

I think that is hypocritical. I do not think this country should be in that position.

So we strike these items; we fence two, we place the rest of the money in deficit reduction.

I want to say a few words about the nuclear pits because I think there is some misunderstanding. Although current production capacity may be limited, it is simply not true, as some have asserted, that the United States lacks the capacity to manufacture replacement pits. According to the Department of Energy's own Web site:

The first pit that could be certified for use in the stockpile was manufactured in April 2003 as a first step to establish an interim—10 to 20 pits per year—production capability at Los Alamos in 2007.

And the Los Alamos facility can be modified to produce 150 pits a year.

Although the exact number is classified, reputable open sources estimate that there are between 5,000 and 12,000 extra pits in reserve at Pantex, beyond the 10,600 current intact warheads.

The average age of the plutonium pits in the U.S. stockpile is 19 years, and the Department of Energy estimates a pit minimum life to be between 45 and 60 years, with no life-limiting factors.

This is the beginning. This money will go to field a new generation of nuclear weapons. We should not do this. The House had the good sense to eliminate this language. The Senate should follow.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition? Who yields time?

Mrs. FEINSTEIN. I yield 4 minutes to the distinguished Senator from Massachusetts.

Mr. KENNEDY. How much time remains?

The PRESIDING OFFICER. Five minutes ten seconds.

Mr. KENNEDY. And how much on the other side?

The PRESIDING OFFICER. They have 13 minutes.

Mr. KENNEDY. Four minutes?

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. I am recognized for how long?

The PRESIDING OFFICER. The Senator from California has yielded 4 minutes.

Mrs. FEINSTEIN. Mr. President, I am happy to yield the remainder of my time to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator is recognized.

Mr. KENNEDY. Then, would the Chair let me know when I have a minute and a half left, please?

First of all, I welcome the opportunity to be here with my friend and colleague from California in what I consider to be one of the most important votes that we will have this year. It is an issue involving our security. It is an issue, I believe, also, in the battle on terrorism.

It was just 40 years September 24, 40 years ago on September 24, that we had the signing of the first partial test ban treaty.

This chart reflects in a very abbreviated way, but an enormously important way what has happened over the last 40 years as leaders of the Democrats and Republicans alike moved us away from the real possibility of nuclear confrontation, and we have seen enormous success. We have seen the willingness of countries around the world to give up their capability of developing nuclear weapons because they wanted to be a part of the worldwide effort on nuclear proliferation. They also recognized it would be a more secure world if we didn't have further nuclear expansion.

We listened to the debate yesterday and the points that were well-made by my very good friend from New Mexico about how this legislation is really not about developing a new nuclear weapon. But the Senator from California pointed out three different references, all which have been included as a part of the RECORD. The most obvious is the administration's own statement of administration policy this past spring asking for the continued need for ''flexibility in the cooperative threat reduction program and support for critical research and the development''—I will say this again—''and the development for low-yield nuclear weapons.'' That is what this issue is about.

Are we going to reverse the last 40 years? Do we possibly think there will be a safer America if we begin to move back towards the testing and the developing of what they call mini-nukes?

I don't believe so, because I believe a nuke is a nuke is a nuke. It is an entirely different weapons system than those in our conventional forces. We understand that. We have to take what the administration has stated: they intend to move ahead in the development of a new nuclear capability.

Those with responsibility within the administration have made it very clear. In February of 2003, Fred Celec, Deputy Assistant Secretary of Defense for Nuclear Affairs, said:

> If a nuclear bomb could be developed to penetrate rock and concrete and still explode, it will ultimately get fielded.

In April of 2003, Linton Brooks, Chief of Nuclear Weapons at the Department of Energy, stated before the Senate Armed Services Committee:

> I have a bias in favor of the lowest usable yield because . . . I have a bias in favor of things that might be usable.

We have been warned. We have the capability that exists to make sure we have the deterrence on into the future. But this is a radical departure of 40 years of Republicans and Democrats alike moving us away from the dangers of nuclear confrontations and the dangers of nuclear proliferation to the development of small nuclear weapons. And we will find this an invitation for the terrorists around the world to come and seek out that weapon. If we develop a small nuclear weapon, what are we going to find? The corresponding action by countries around the world—the Iranians and the North Koreans continuing their progress in developing their own nuclear weapons system.

That doesn't make sense in terms of the country that is the number one military force in the world today. It doesn't make sense, and it doesn't make sense for our battle against the war on terrorism.

It is very clear why this amendment is needed. The administration pretends it is not really planning to produce these new kinds of nuclear weapons—the mini-nukes and the bunker busters. They just want to find out if they are feasible.

We all know what is at stake. The administration wants us to take the first steps down a new path. But going down that path could easily make nuclear war more likely. Just a little step—they say. But it is still a first step. And a step down that path now could make the next step easier, and the next and the next. It is a path that makes nuclear war more likely, and the time to call a halt is now—before we take the first step.

We ask for and implore the support of our colleagues to move us away from the real dangers of nuclear proliferation and the development of these dangerous mini-nukes that can pose a danger to the world population.

I withhold whatever time is left.

Mrs. FEINSTEIN. Mr. President, before the chairman of the committee speaks, I ask unanimous consent that Senator STABENOW be listed as a cosponsor.

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

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, fellow Senators, first of all, it should be understood by everyone that this language which is being stricken does not permit the United States of America to build any new nuclear weapons—large, small, medium-sized, or otherwise. There is no authority in this bill to build new nuclear weapons.

No. 2, this bill says that in Nevada we used to test nuclear weapons for decades. Whenever our nuclear laboratory experts used to certify to our Presidents that the weapons were in good shape, ready, reliable, available, and safe, they did it principally because we had a testing ground in Nevada, and we tested bombs to know precisely their efficacy, reliability, et cetera.

When we decided to no longer test, we essentially closed down or put that test facility in mothballs. But we knew we must always keep it in case we needed it. We left it there, saying if we ever need it, we can use it in 3 years.

All this amendment does—it could be a totally freestanding amendment, if one wanted, but it is part of the amendment that the Senator from California strikes—is say let us upgrade that Nevada Test Site so if we need it, we can use it in 1½ years. There are few American nuclear experts who do not think 1½ years is the correct amount—not 3 but 1½. That has nothing to do with us setting about to build a brand new small nuclear weapon. It has nothing to do with us building a stockpile of new weapons. It has to do with just what I explained and nothing else.

Third, regardless of what has gone on in Los Alamos for the last 7 years in an effort to produce for America plutonium pits—the ingredient for a nuclear weapon that must be there or you don't have a nuclear weapon—we have no American manufacturing center for the production of pits. The Los Alamos facility has been a facility that we just pushed. We pushed it and pushed it, and finally it has almost produced a pit. But it has not produced a certifiable pit yet in 7 years of effort. It has produced a pit or two, but they are not certifiable, which means they are not complete.

All this bill says is the time has come to build a plant to manufacture pits for the next 40 years—not for a new weapons system but so we can have them in storage for the next 40 years. We are the only nuclear weapons power without spare pits for nuclear weapons. Yes, the only one. Why would we say we should not do that? The only reason we would do it is if we believed what the Senator from California alleges; that is, we are doing it because we are going to build a new set of nuclear weapons.

If we were authorizing a series or a set of new nuclear weapons, this amendment would be the biggest amendment in the country. It would have been written about, talked about, harked about, and we would have been all over and upside down and inside out. But there is nothing in the bill that produces a single new nuclear weapon.

That comes to the final part. It is very simple, if you will just listen and know what we are trying to do.

Those who manage our nuclear, those who are our nuclear experts, who use their minds to dream up ideas about where we are going to be, what troubles we might have in the future, and what new might occur in the world that might require changes, are the men and women of great talent. This bill does what the executive branch and the experts on nuclear management say: Let those people think, let those people design, let those people postulate, and don't put blinders on their brains and say you can't even think about these things because it might someday yield an idea that might cause us to do something different with a nuclear weapon.

Frankly, I believe the men and women who already put that fantastic brainpower to work in this area deserve to have their brains used, not tied in knots by rules about what you cannot think about and what you cannot plan for.

The third part, this amendment says you cannot plan, think about, design for the future, even when you know you cannot build them, which is what the rule is going to be.

We have argued this about as long as we can. I have argued it about as hard as I can. I am getting close to being tired of arguing this, but it is so important we not make a mistake. It would be a tragic mistake to vote for the Feinstein amendment. There is nothing we are doing that the Feinstein amendment should stop. If, in fact, we were going to build nuclear weapons, you ought to be concerned and perhaps vote with her, if she is saying do not do it. But we do not plan to. It is not in here. And she cannot stop it because we are not going to do it. In that regard, the amendment is useless.

But it is not useless when it comes to the three things that it does: It will stop us from planning the manufacturing plant of the future for pits. It will do that. And we should not do that. Second, it will stop the money and the planning and the work to bring the Nevada Test Site up to par and ready for a new test in 18 months rather than 3 years. It will do that. And third, it will put blinders on the scientists with reference to them being able to speak about the future and future needs, which change.

How much time remains?

The PRESIDING OFFICER. The Senator from New Mexico has 4 minutes remaining. The Senator from California has 9 seconds.

Mr. DOMENICI. I reserve my time.

AMENDMENTS NOS. 1676, 1677, 1678, EN BLOC

Mr. REID. Mr. President, I send three amendments of Senator DOMENICI to the desk. They have been reviewed. I ask they be considered en bloc.

The PRESIDING OFFICER. The clerk will report the amendments, en bloc.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. DOMENICI, proposes amendments Nos. 1676, 1677, and 1678, en bloc.

Mr. REID. Mr. President, I ask unanimous consent that the reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 1676

At the appropriate place, insert the following:

SEC. . LOWER COLORADO RIVER BASIN DEVELOPMENT.

(a) IN GENERAL.—Notwithstanding section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)), no amount from the Lower Colorado River Basin Development Fund shall be paid to the general fund of the Treasury until each provision of the revised Stipulation Regarding a Stay and for Ultimate Judgment Upon the Satisfaction of Conditions, filed in United States district court on April 24, 2003, in Central Arizona Water Conservation District v. United States (No. CIV 95–625–TUC–WDB (EHC), No. CIV 95–1720–OHX–EHC (Consolidated Action)), and any amendment or revision thereof, is met.

(b) PAYMENT TO GENERAL FUND.—If any of the provisions of the stipulation referred to in subsection (a) are not met by the date that is 10 years after the date of enactment of this Act, payments to the general fund of the Treasury shall resume in accordance with section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1534(f)).

(c) AUTHORIZATION.—Amounts in the Lower Colorado River Basin Development Fund that but for this section would be returned to the general fund of the Treasury may not be expended until further Act of Congress.

AMENDMENT NO. 1677

(Purpose: To set aside additional funds for the Mni Wiconi project, South Dakota)

On page 33, line 12, before the period at the end, insert the following: ''*: Provided further,* That of the funds provided under this heading, an additional $5,000,000 may be available for the Mni Wiconi project, South Dakota''.

AMENDMENT NO. 1678

(Purpose: To set aside funds for certain projects and activities at the Alabama-Coosa River, Alabama)

On page 15, line 16, after the colon, insert the following: ''*Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, may use not less than $5,461,000 of the funds made available under this heading for the Alabama-Coosa River, Alabama (including for routine operations and maintenance work at Swift Creek Park), of which not less than $2,500,000 may be used for annual maintenance dredging of navigational channels of the Alabama-Coosa River:''.

Mr. REID. These have been cleared by Senator DOMENICI, this Senator, and our respective staffs.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendments (Nos. 1676, 1677, and 1678) were agreed to.

Mr. DOMENICI. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 1655

Mrs. FEINSTEIN. I yield the remaining time.

Mr. DOMENICI. I yield my remaining time. I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. All time having expired, is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL, I announce that the Senator from Illinois (Mr. FITZGERALD) is necessarily absent.

I further announce that the Senator from Oregon (Mr. SMITH) is absent because of a death in the family.

Mr. REID of North Carolina. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY) the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

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

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

The result was announced—yeas 53, nays 41, as follows:

[Rollcall Vote No. 349 Leg.]

YEAS—53

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

NAYS—41

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

NOT VOTING—6

Edwards	Graham (FL)	Lieberman
Fitzgerald	Kerry	Smith

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, Senator JACK REED has an amendment that is acceptable, if he is ready. Is the Senator ready?

Mr. REED. I have my amendment.

Mr. DOMENICI. I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I send amendment No. 1659 to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED], for himself, Mr. LEVIN, Mr. KENNEDY, Mrs. FEINSTEIN, and Mr. NELSON of Florida, proposes an amendment numbered 1569.

Mr. REED. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prohibit the use of fund for certain activities relating to advanced nuclear weapons concepts, including the robust nuclear earth penetrator)

At the end of title III, add the following:

SEC. 313. No funds appropriated or otherwise made available to the Department of Energy by this Act may be available for activities at the engineering development phases, phase 3 or 6.3, or beyond, in support of advanced nuclear weapons concepts, including the robust nuclear earth penetrator.

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

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

Mr. REED. Mr. President, I am disappointed the Feinstein-Kennedy amendment did not pass because I believe that amendment really responded to the issues of the moment. We are in a dangerous time because we see around the globe where there are nations aspiring to become nuclear powers, where proliferation is one of the most dangerous threats this Nation faces, particularly proliferation that would provide fissile material to terrorists, which is the great fear of all of us.

In order to resist the growth of nuclear powers around the globe, we have to be faithful to our commitment to arms control and our sense that further development of nuclear weapons—and, I would argue, weapons without military requirements—is really not so much an exercise in protecting the United States but it is an exercise that will lead us down a path that could see our country exposed to even more dangers. So I am very much concerned that the Feinstein-Kennedy amendment failed.

Therefore, I am proposing an amendment that I hope will essentially put restraints upon the use of these dollars in the development of nuclear weapons, and I will explain it in more detail later. It would constrain the expenditure of funds to the the research phase. It would preclude monies to be used to engineer a weapon, to test a weapon, and to deploy a weapon. It is language that is consistent with the language included in the Defense Authorization Act which we passed several months ago.

We are at a difficult moment in our history, as I mentioned.

Mr. NELSON of Florida. Will the Senator yield for a question?

Mr. REED. I would be happy to yield for a question to my cosponsor, Senator NELSON.

Mr. NELSON of Florida. I appreciate the Senator offering this amendment and I just want to underscore with a question that the Senator's amendment will allow the research to go on as we intended in the Defense authorization bill but would not allow the development and the engineering where these weapons would be actually designed until such time as the executive branch would come back to the Congress to get approval to do that. Is that correct?

Mr. REED. That is absolutely correct. It reflects the value of the contribution the Senator from Florida made in the Defense authorization debate.

Mr. NELSON of Florida. I thank the Senator.

Mr. REED. There are some who have criticized any attempts at arms control as futile, as failures. That, I think, is a dangerous idea. I hope arms controls work because history seems to show that, without controlling arms, eventually they wind up being used, and when it comes to the issue of nuclear weapons, that is a great nightmare that has haunted all mankind since 1945.

Since that date, we have been successful in containing the use of nuclear weapons. It is because we took prudent steps to try to control the proliferation of nuclear weapons, the development of nuclear weapons. And at this juncture in history, to stand up and say arms control does not work not only misreads history but misses the point entirely. We have to make it work. Indeed, arms control has provided us at least some respite, some bit of breathing space, from the horrors of Hiroshima. That in itself is a success.

Today, particularly when we look at North Korea, I think we had all better hope fervently that arms control can work because without some type of arms control there, we will be in an extraordinarily precarious situation.

If we look at the situation in Iran, where the international arms control agency is trying to work with the Iranians, trying to get them to cooperate with the world community, that is an example of arms control in action. I hope—and I am sure I speak for everyone else—that that effort succeeds.

Time and again, when we have had serious situations, we have been able to use the norms established by international arms control agreements as leverage in a particular crisis. Arms control is not perfect, but without it we would be in a much more dangerous and much more devastating world environment.

This administration, however, has effectively turned its back on so many different initiatives: The repeal of the ABM Treaty, the failure to follow up the Comprehensive Test-Ban Treaty by sending it again to the Senate for a vote. This and so many other examples suggest that the administration has not effectively read the lessons of history. I believe they have the mistaken view that arms control will never work rather than trying to make it work, understanding it is not perfect but it is essential to our national security strategy.

My colleague and friend John Spratt stated it very well in an article in the March 2003 edition of Arms Control Today. In his words:

My greatest concern is that some in the administration and in the Congress seem to think that the United States can move the world in one direction while Washington moves in another, that we can continue to prevail on other countries not to develop nuclear weapons while we develop new tactical applications for such weapons and possibly resume nuclear testing.

Congressman SPRATT was very clear. In life, one really cannot have it both ways. I think this is an example of that. At one time, you cannot be trying to persuade, convince, and cajole other nations to abandon the development of nuclear weapons while you are blatantly going ahead and developing them yourself. The approach of the administration has been to attempt to get it both ways. It will be doomed to failure.

I would argue that rather than declaring the arms control movement dead, we have to give it renewed life. Indeed, we can point to successes in the past that should give us some comfort to know that if we work hard, if we work in a disciplined and dedicated way, we can use arms control to enhance our security—not exclusively depend, certainly, on arms control, but it has to be an important part of our repertoire.

In the early 1960s, when there were a few nuclear powers—the United States, Soviet Union, Britain, France, and China—there was a fear that within a decade or more, as President Kennedy expressed it, there would be at least 25 countries that developed nuclear weapons. What was feared did not come to pass because of effective, meaningful arms control exemplified in many respects by the nonproliferation treaty and other initiatives.

Deputy Secretary of State Richard Armitage has cited this record, indicating his support for continued efforts at arms control. In his words:

[I]nstead of the 25 or so countries that President Kennedy once predicted, only a handful of nations possess nuclear weapons. Of course we suspect many more countries have chemical or biological weapons, but still short of the scores that had been predicted in the past. We have reached this state of affairs in no small part through the concerted effort of many nations. Agreements, such as the nuclear nonproliferation treaty and the Chemical Weapons Convention, organizations such as the IAEA and the Nuclear Suppliers Group—these constitute a global security architecture that has served us satisfactorily and kept us safe.

But critics of arms control fail to acknowledge that Argentina and Brazil and South Korea and Taiwan ceased

their suspected nuclear programs in part because of the international norms represented by the nonproliferation treaty. Without these norms and without the United States exemplifying these norms, I don't think we would have the success we have had in these cases that I have cited.

Similarly, when the Soviet Union dissolved and the Newly Independent States of Belarus, Kazakhstan, and Ukraine found themselves with nuclear weapons, they voluntarily turned them in as a result of the norms established by the international arms control regimes. South Africa has also given up their nuclear weapons.

This is an example, not of perfect success but of success. If we begin to abide by our commitment to the nonproliferation treaty, to our commitments to reducing nuclear weapons rather than building new ones, we might be able to provide more leverage on countries such as India and Pakistan so that they would join the nonproliferation treaty and the Comprehensive Test-Ban Treaty. That is the kind of leadership we need at the moment. I hope we can get it.

As I mentioned before, we also are facing very serious problems with North Korea and Iran. I hope they can be resolved peacefully. But that peaceful resolution implies extending arms control agreements to these countries. So disparaging arms control is doing a great disservice to our national security and to our strategy.

The Bush administration has seemed bound since their first days in office to reverse 50 years of arms control activities, both by Republican and Democratic administrations. In December 2001, they published their Nuclear Posture Review.

This review was troubling in many respects. For the first time in history, this review suggested that we would use weapons, nuclear weapons, not simply to deter another nuclear power but to engage a nonnuclear power. The report essentially said that we would consider for the first time and be prepared to use nuclear weapons against nonnuclear nations that were nonaligned with a nuclear power—a tremendous reversal in our strategic outlook, blurring the distinction between conventional weapons and nuclear weapons, a distinction that since Hiroshima we on both sides of the aisle have endeavored mightily to maintain crystal clear. This blurring, this suggestion that we would use nuclear weapons in a first strike against nonnuclear powers, set the tone for other administration pronouncements.

Last November, a memo from then-Under Secretary of Defense for Acquisition, Technology and Logistics, Pete Aldridge, became public. The memo directed nuclear weapons laboratories to:

> . . . assess the technical risks associated with maintaining the U.S. arsenal without nuclear testing . . . [and suggested the] U.S. take another look at conducting small nuclear tests.

Following up to this memo, the President's budget for fiscal year 2004 included $24 million to reduce the time needed to prepare to conduct a nuclear weapons test from 2–3 years at present to 18 months—once again, a very sobering and ominous suggestion that we would begin to test nuclear weapons again; that we would abandon our efforts to assure the quality of our stockpile through nontesting means and that we would conduct tests.

If the United States of America begins again to conduct nuclear tests, I think that would be an open invitation to other countries, such as India and Pakistan, and perhaps powers undeclared as yet, to begin a nuclear testing program. It certainly would be good cover internationally.

The President's budget in 2004 also went on to request $22.8 million to accelerate the design and select a site for a new modern pit facility.

Plutonium pits are necessary components of nuclear weapons. We have not had the ability to build such pits since 1988. We do need a pit facility. But the proposal of the administration goes far beyond any conceivable needs, given the current situation. They want to create a facility that is capable of producing up to 500 pits per year. That would be 500 nuclear weapons per year. That is a rate that rivals anything in the cold war, and according to the administration, the cold war is over—except, I guess, when it comes to nuclear policy or at least nuclear design and production policy.

Then in addition to this development, the administration has been vigorously pressing for the design of a robust nuclear earth-penetrator to be used against hard and deeply buried targets. The RNEP would be a modification of an existing nuclear device, necessarily a very large nuclear device. It has been deemed a bunker buster. But, frankly, the kilotonnage or the tonnage of this RNEP is so large it would be a city buster, not a bunker buster. The kilotons of the weapons dropped on Hiroshima and Nagasaki were 14 and 21 kilotons, respectively, and this RNEP could be 71 times larger than the bomb dropped on Hiroshima. That is not a bunker buster. That is not a discrete weapon that could take the place of precision conventional weapons. Yet the administration is pressing forward.

Then this year the administration requested the repeal of the 1993 statutory ban on the research, development, and production of low-yield nuclear weapons and $6 million for funding for advanced nuclear weapons concepts.

Current law prohibits work, design, research with respect to weapons below 5 kilotons. The administration seeks to repeal this ban—strike it out—even though there is no military requirement for these small sized nuclear weapons.

When asked about this proposal, Ambassador Linton Brooks, the Acting Director of the National Nuclear Security Administration, stated before the Armed Services Committee:

> I have a bias in favor of something that is the minimum destruction. . . .that means I have a bias in favor of things that might be usable.

Here we have it. A history of 5 decades of trying to create a nuclear policy that dissuades the world from using nuclear weapons and we are trying to develop small nuclear weapons, which the scientists at this time say—the lab leaders say—are designed to be used. We have crossed a huge space between our policy of 5 decades and this newly emerging policy. We have moved from being the leader in arms control to being someone who treats arms control casually, if not flippantly. The irony, of course, is we stand to suffer the most. I hope we could reverse this trend.

I had hoped very much that the Feinstein-Kennedy amendment would be agreed to because I think that would have sent a strong signal and be a practical and pragmatic step. But now we have the opportunity to constrain the funds that are being expended for those preliminary research aspects of nuclear weapons development. As my colleague, Senator NELSON, said, it will give Congress a chance to decide, after more information, more debate, and more justification, whether it is in our national interest to proceed with the development, engineering, and deployment of a new class of nuclear weapons.

The amendment I offer today will allow the Department of Energy to use $22 million in funding that the President requested for advanced nuclear weapons concepts for research alone. The amendment would not allow money to be used for developing, testing, or deploying new nuclear weapons, or RNEP, which is a modification of an existing weapon.

This amendment would assure that the appropriations bill is consistent with the language that is included in the fiscal year 2004 Defense authorization bill. During that debate, an amendment that would require the Department of Energy to seek specific authorization and appropriations before proceeding with phases beyond research passed this body by a vote of 96 to 0. The Senate has clearly spoken on this issue. The amendment I offer today will ensure that the Department of Energy will comply with the wishes of Congress by returning to the Congress before beginning development, testing, production, and deployment of a new nuclear weapon or the RNEP.

I believe we should retain the prohibition on any research or development of low-yield nuclear weapons. But if that must change—if we must eliminate the threat-first amendment—I believe the research is all that is necessary at this time and that there should be a full and complete debate on any development funding for a system of nuclear weapons or the RNEP based upon research first.

The primary reason that the administration says it needs this money for advanced nuclear concepts is to, in their terms, ''train the next generation of nuclear weapons scientists and engineers.''

Ambassador Brooks, Director of the National Nuclear Security Administration, stated that research must be funded to ''remove the chilling effect on scientific inquiry that could hamper our ability to maintain and exercise our intellectual capabilities to respond to needs that one day might be articulated by the President.''

In July, Energy Secretary Abraham said: ''We are not planning any nuclear weapons at all.'' If research is the reason, if research is the justification, if we are planning no nuclear weapons, then this amendment provides the funding and the authority for the research.

This amendment is very clear about what is allowed. There are very distinct phases in the development of nuclear weapons. Since 1953, the Department of Defense and the Department of Energy have worked in a very formalized weapons development process. Indeed, the Atomic Energy Commission was one of the predecessors of the effort. And the Atomic Energy Commission was also involved in the formulation of the process.

My amendment would prohibit ''development engineering,'' which is the third phase. This is for new weapons development.

All of these phases would be authorized, and the funds could be expended for concept definition, feasibility study, design definition, and cost study. But you could not go into phase 3, development definition. It is clear and precise—allowing the research and allowing all that is necessary, according to both the rationale to train our scientists and also the affirmation by the Secretary of Energy that we were not planning to develop new nuclear weapons.

Mr. DOMENICI. Mr. President, I wonder if the Senator will yield.

Mr. REED. I am happy to yield.

Mr. DOMENICI. Did the Senator conclude amendment No. 1659 regarding the Energy Department's research on nuclear weapons?

Mr. REED. I did not. In the next few minutes I will complete my comments on the amendment.

Mr. DOMENICI. I wonder if the Senator might offer that amendment so I could give him my concurrence.

Mr. REED. The amendment has been offered. I think Senator LEVIN wants to speak. But the Senator's concurrence will be invited as soon as I conclude.

Mr. DOMENICI. Mr. President, on this side of the aisle, we accept the Reed-Levin-Kennedy-Feinstein amendment because it is current policy. It just repeats current policy unequivocably. This is what the policy of the country is. We did not change that in our bill. The Senator is most welcome to try to make it eminently clear what that current policy is. For that reason, we will accept it whenever it is ready to be accepted by the Senate.

Mr. REED. Mr. President, reclaiming my time, I thank the chairman for his kindness in accepting the amendment. The policy is included in the Defense authorization bill. But there is a debate ongoing about what the precise policy is. We want to at least set this limit with respect to the policy.

The chairman suggesting that it will be accepted will prompt me to quickly conclude my comments.

I note that my colleague from Michigan is here also seeking recognition.

We brought this measure to the Defense authorization debate. As was indicated in my discussion with Chairman DOMENICI, the Senate passed this provision overwhelmingly. This is now included in this appropriations bill. It is going to be an interesting conference because our colleagues in the House have stricken the money; that is the preference that I would suggest is the best approach. But short of that, this at least constrains the spending of the funds to the first three phases of research, which apparently, at least in my view, directly responds to the professed need for the funds, and it will also again support the statement of the Secretary of Energy that there is no plan to develop nuclear weapons.

In a letter to the Armed Services Committee, Admiral Ellis, the Commander of the Strategic Command, which command is responsible for all nuclear weapons, stated that:

> U.S. Strategic Command is interested in conducting rigorous studies of all new technologies examining the merits of precision, increased penetration, and reduced yields for our nuclear weapons.

Once again, this proposal corresponds to the request from our military leaders in what they are looking for today.

I hope that not only this amendment will be incorporated into this pending appropriations bill but that in conference we at least maintain this.

I again urge my colleagues to think hard again about the Kennedy-Feinstein proposal and the proposal that is already included in the House provisions. But today is an opportunity at least to slow down a rush to develop nuclear weapons which have no, or very limited, military requirements, and it would give us an opportunity as a Congress to debate the wisdom of our course of action.

Let me conclude by saying we have changed course dramatically. After 50 years of being the leading nation in the world arguing for arms control, arguing for sensible constraints in the development of nuclear weapons and limits on nuclear weapons, we have become a nation that is casual about our commitment to arms control, that denigrates it too often, and that course has left us with the only other option which is I think less appropriate. As I said initially, if there are no arms control, then there is a higher probability of arms usage. With nuclear weapons, that is a thought that no one wants to contemplate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I commend my friend from Rhode Island for his leadership in this area. It is critically important that we show some constraint—at least in funding of new nuclear weapons and modifications of existing nuclear weapons in order to make them more usable.

Appropriating funds, as this bill does, for research on a new nuclear weapon and research on a modification of existing weapons in order to make them more useful moves us in a dangerous new direction which marks a major shift in American policy. It is inconsistent with our longstanding commitment under the Nuclear Non-Proliferation Treaty to end the nuclear arms race. It undermines our argument to other countries around the world that they should not develop or test nuclear weapons. Unfortunately, the bill before us supports this dangerous new direction by putting funds into research of both the new weapon and modification of existing weapons to make them more usable.

At least the pending amendment of the Senator from Rhode Island puts an explicit constraint on the expenditure of that money. Why it is so important this language be included is that it makes explicit, before we can move to the developmental stage of these new weapons, there must be an explicit congressional vote. It cannot happen—this next stage, which we hope will never come—if the Reed language is adopted and maintained in conference, and if we were able to maintain similar language in conference in the authorization bill that development of these new weapons and modified weapons, to make them more usable, could not happen without an explicit action on the part of Congress.

That is not the current policy that there be an explicit authorization. It is not inconsistent with current policy that there be an explicit authorization before we approve development, but it is not the existing policy.

It is critically important that at least if we cannot stop this country from moving in a direction which is so totally inconsistent with what we are urging the rest of the world to do, at a minimum, we go as far as we can in expressing the determination of at least many of us that we move not at all, if possible, before we move that there be a formal vote on the part of Congress.

I do not understand how we can argue to other countries, with our heads high, that they should not move in a nuclear direction at the same time we are doing research on new nuclear weapons. We are telling others, do not go down that road. But instead of being a leader in the effort to prevent the proliferation of nuclear weapons, we are going to move recklessly down that

same road. We are following a policy that we do not tolerate in others.

The adoption of the Reed amendment would at least put some brake on the speed at which we are going down that road, and hopefully, before development is reached, before taking the next milestone on that road.

Appropriating funds for research in new nuclear weapons begins to take the United States in a dangerous new direction that marks a major shift in American policy, is inconsistent with our longstanding commitment under the Nuclear Nonproliferation Treaty to end the nuclear arms race, and undermines our argument to other countries around the world that they should not develop or test nuclear weapons. Unfortunately the bill now on the Senate floor would also support this dangerous new direction. But the pending amendment puts an explicit constraint on it.

Current U.S. law bans research and development of new nuclear weapons that could lead to their production. The specific weapons covered by the ban are so called low-yield nuclear weapons which have a nuclear explosive yield of 5 kilotons or less. Five kilotons is roughly a third the size of the nuclear bomb that was used at Hiroshima, which immediately killed an estimated 140,000 people and left many more injured.

The Bush administration asked that this ban be repealed. If the ban is repealed, the purpose is to make nuclear weapons more usable. As stated by Linton Brooks, the Administrator of the National Nuclear Security Administration in testimony before the Subcommittee on Strategic Forces of the Senate Armed Services Committee on April 8, 2003, ''I have a bias in favor of the lowest usable yield because I have the bias in favor of something that is the minimum destruction . . . I have a bias in favor of things that might be usable.''

The language approved by a majority of the Armed Services Committee and included in the Senate passed version of the Defense authorization bill would repeal this ban. Without this ban there is no impediment in law to research, development, testing, production, or deployment of new, low yield nuclear weapons. The bill before us would also support the repeal of this ban by appropriating $6 million to begin the research on new low-yield nuclear weapons, or for any other advanced new nuclear weapons concept.

The Defense authorization bill authorizes the National Nuclear Security Administration to continue work on a robust nuclear earth penetrator (RNEP). The Energy and Water bill would appropriate these funds.

This effort would modify one of two existing high-yield nuclear weapons to create a nuclear weapon that will penetrate rock. Both weapons being looked at for possible modification are high yield nuclear weapons with yields that are approximately 30 and 70 times the explosive power of the Hiroshima bomb. Without a requirement that the earth penetrator weapon be authorized by Congress, there is no legal impediment to its development, testing, production, or deployment.

At a time when the United States is trying to dissuade other countries from going forward with nuclear weapons development, when we strongly oppose North Korea's pulling out of the Nuclear Nonproliferation Treaty, when we are trying to prevent Iran from establishing a nuclear weapons program and when we are spending over a billion dollars to prevent the spread of nuclear weapons material and technology, these actions would send a terrible message. We are telling others not to go down the road to nuclear weapons. But instead of being a leader in the effort to prevent the proliferation of nuclear weapons, we are recklessly driving down that same road. In short, the United States is following a policy that we do not tolerate in others.

President Bush on June 18 stated that the United States will not tolerate a nuclear Iran. Similarly in May President Bush, in a joint statement with the President of South Korea, said he would not tolerate a North Korean nuclear weapon.

The leaked version of the Nuclear Posture Review identifies both North Korea and Iran as countries against which the United States should be prepared to use nuclear weapons. Clearly North Korea is the focus of the concern about hard and deeply buried targets and the desire to pursue the development of an RNEP.

At the same time that the United States is actively engaging in talks with North Korea to persuade them to give up their nuclear weapons program and urging the IAEA to ensure that Iran does not pursue a nuclear weapons program, we are beginning the process to develop new nuclear weapons. The Bush administration is taking action to ensure that there is a robust complex to build new nuclear weapons and an accelerated test readiness program to test them.

Where is the consistency in our actions? Having undertaken a preemptive war against an alleged imminent threat in the name of counter proliferation, can the United States effectively unite the world against Iran and North Korea's pursuance of nuclear weapons programs when the Bush administration appears to be on the verge of reversing a decades old nuclear policy and pursuing new tactical nuclear weapons? Weapons that, in the words of Linton Brooks, the Administrator of the National Security Administration, ''might be usable.''

The inconsistency of U.S. action was noted in a May 17 editorial in the Economist Magazine:

> . . . America would dangerously blur the line against nuclear use by anyone. That would make it more likely, not less, that America's own forces would eventually have nuclear weapons used against them too. Mr. Bush has said repeatedly, with reason, that he wants America to rely less on nuclear weapons for its future security, not more. In their determination to leave no weapons avenue unexplored, his advisors are proposing to lead America along a dangerous path. Time the president called a halt.

On July 17 of this year the New York Times also commented on the inconsistency between urging others to forego nuclear weapons development at a time when the United States is beginning to put in place all the elements of a new nuclear weapons program. Particularly a program whose goal appears to be to produce nuclear weapons that ''might be usable.''

The July 17 editorial cautioned:

> Nuclear bombs should not be casually reengineered for ordinary battlefield use at a time when countries like North Korea, Pakistan and India have added nuclear weapons to their arsenals and a chief objective of U.S. policy is to make sure these weapons are never used.

I urge the Bush administration to continue to work to persuade both North Korea and Iran to disavow nuclear weapons programs. Arms control still has a vital role to play. As Deputy Secretary of State Armitage said, in defense of the Nonproliferation Treaty, ''Agreements such as the Nonproliferation Treaty and the Chemical Weapons Convention, organizations such as the IAEA and the Nuclear Suppliers Group—these constitute a global security architecture that has served us satisfactorily and kept us sage.''

As Rose Gottemoeller, a former Assistant Secretary of Energy said:

> Other countries watch us like a hawk. They are very attentive to what we do in the nuclear arena. This is going to be considered another step in the tectonic shift. I think people abroad will interpret this as part of a really enthusiastic effort by the Bush administration to renuclearize. And I think definitely there's going to be an impetus to the development of nuclear weapons around the world.

Let us slow down and think about the road on which we are about to travel.

Senator REED, Senator KENNEDY, and I offer an amendment today to once again preserve Congress's role in any decision to move toward the design, engineering, testing, or deploying of any new nuclear weapon. And equally important, this amendment will require us to stop and think seriously before going down the road toward new nuclear weapons.

The amendment would require the Department of Energy to obtain a specific authorization from Congress before the Department could move to phase 3 or beyond in the nuclear weapons development process. Phase 3 is the engineering development phase, the point at which a concept would begin to be a new weapon.

The amendment would also apply to this same phase, the engineering development phase, in the process of modifying an existing weapon for a new military requirement. When the Department modifies an existing weapon the engineering development phase is the 6.3 phase. This amendment would apply to the 6.3 phase as well.

Language similar to this amendment passed the Senate 95–0 during the consideration of the Defense Authorization Act. There was no disagreement then, and should not be now, that Congress retain a central role in any decision to seek new nuclear weapons.

In 1994, Congress determined that the United States did not need to embark on a new nuclear weapons program, which would require nuclear weapons testing prior to being deployed, and banned research that could lead to production of new, low-yield, nuclear weapons. The current law is found at section 3136 of the Fiscal Year 1994 National Defense Authorization Act. It is commonly known as the Spratt-Furse provision.

The Senate passed version of the Fiscal Year 2004 National Defense Authorization Act repeals the current Spratt-Furse law, while the House-passed version of the Fiscal Year 2004 National Defense Authorization Act, modifies the current law. The House modification would allow the Department of Energy to conduct research on low yield nuclear weapons but not to begin the engineering design phase of the nuclear weapons process.

The conferees have been working for several months to resolve the many differences in the two versions of the Defense Authorization Act. One of the issues that the conferees have yet to resolve is the issue of the Spratt-Furse provision.

The conferees are discussing whether Spratt-Furse should be modified, as in the House-passed bill, or repealed, as in the Senate-passed bill, or whether both provisions could be dropped and the current law preserved. It is important to note that the Reed amendment is consistent with any of the possible outcomes in the defense authorization conference.

Whatever the outcome, the Reed amendment will ensure that Congress plays a role in future nuclear weapons decisions.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DOMENICI. Mr. President, we have nothing further to say about the amendment. We are ready to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1659) was agreed to.

Mr. DOMENICI. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DOMENICI. Mr. President, I address Senators—and I am sure if Senator REID were here, he would concur—there is a real chance that we could finish this bill this evening. We have two windows. We have this window that lasts until 4:30 and then Senators have to be elsewhere. We understand that. Then there is a window from 6 to 7 when Senators could be here.

I am asking Senators, if you have amendments, bring them down and let's get them considered. We will move ahead as soon as Senator REID gets here with amendments that are getting checked and cleared to which there is no objection. We have quite a few of those. We would be very pleased if we heard from Senators, if your staff could tell us there were no more amendments. Then we could say we could finish from 6 to 7 p.m. this evening.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, Senator DOMENICI and I have worked during the lunch hour and up to now to clear some amendments.

AMENDMENTS NOS. 1646, AS MODIFIED; 1656, AS MODIFIED; 1681 THROUGH 1683, EN BLOC

Mr. President, I send five amendments to the desk, two of which—amendments Nos. 1646 and 1656—will be offered as modified, and I ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes amendments numbered 1646, as modified, 1656, as modified, and 1681 through 1683, en bloc.

The amendments are as follows:

AMENDMENT NO. 1646, AS MODIFIED

(Purpose: To modify the provision relating to the Waikiki Beach project, Oahu, Hawaii)

On page 3, beginning on line 2, strike ''the continuation'' and all that follows through line 8 and insert ''preconstruction engineering and design of Waikiki Beach, Oahu, Hawaii, the project to be designed and evaluated, as authorized.''

AMENDMENT NO. 1656, AS MODIFIED

(Purpose: To authorize a wastewater infrastructure project for Coronado, California)

On page 31, between lines 7 and 8, insert the following:

SEC. 117. Section 219(f) of the Water Resources Development Act of 1992 (Public Law 102–580; 106 Stat. 4835), as amended by section 502(b) of the Water Resources Development Act of 1999 (Public Law 106–53; 113 Stat. 335) and section 108(d) of title I of division B of the Miscellaneous Appropriations Act, 2001 (as enacted by Public Law 106–554; 114 Stat. 2763A–220), is further amended by adding at the end the following:

''(71) CORONADO, CALIFORNIA.—$10,000,000 may be authorized for wastewater infrastructure, Coronado, California.''.

AMENDMENT NO. 1681

On page 67, strike line 7 through line 11 and insert in lieu thereof:

''SEC. 506. CLARIFICATION OF INDEMNIFICATION TO PROMOTE ECONOMIC DEVELOPMENT.

''Subsection (b)(2) of section 3158 of the National Defense Authorization Act for Fiscal Year 1998 (42 U.S.C. 7274q(b)(2)) is amended by adding the following after subparagraph (C):

''(D) Any successor, assignee, transferee, lender, or lessee of a person or entity described in subparagraphs (A) through (C).'''

(b) The amendment made by section 506, as amended by this section, is effective as of the date of enactment of the National Defense Authorization Act for Fiscal Year 1998.

AMENDMENT NO. 1682

At the appropriate place, insert the following:

SEC. . Section 560(f) of Public Law 106–53 is amended by striking ''$5,000,000'' and inserting in lieu thereof ''7,500,000''.

AMENDMENT NO. 1683

(Purpose: To direct the Secretary of the Interior to conduct a water supply feasibility study for Tualatin River Basin, Oregon)

On page 42, between lines 5 and 6, insert the following:

SEC. 2___. TUALATIN RIVER BASIN, OREGON.

(a) AUTHORIZATION TO CONDUCT FEASIBILITY STUDY.—The Secretary of the Interior may conduct a Tualatin River Basin water supply feasibility study—

(1) to identify ways to meet future water supply needs for agricultural, municipal, and industrial uses;

(2) to identify water conservation and water storage measures;

(3) to identify measures that would—

(A) improve water quality; and

(B) enable environmental and species protection; and

(4) as appropriate, to evaluate integrated water resource management and supply needs in the Tualatin River Basin, Oregon.

(b) FEDERAL SHARE.—The Federal share of the cost of the study conducted under subsection (a)—

(1) shall not exceed 50 percent; and

(2) shall be nonreimbursable and nonreturnable.

(c) ACTIVITIES.—No activity carried out under this section shall be considered a supplemental or additional benefit under Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)).

(d) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $2,900,000, to remain available until expended.

Mr. REID. Mr. President, I ask unanimous consent that the amendments be agreed to en bloc.

The PRESIDING OFFICER. Without objection, the amendments are adopted en bloc.

The amendments No. 1646, as modified; No. 1656, as modified; Nos. 1681 through 1683 en bloc were agreed to.

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

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

The motion to lay on the table was agreed to.

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

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

The bill clerk proceeded to call the roll.

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

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

AMENDMENTS NOS. 1687, 1688, 1689, 1690, 1691, AND 1692 EN BLOC

Mr. DOMENICI. Mr. President, we have a package of amendments.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself and Mr. REID, proposes amendments numbered 1687 through 1692, en bloc.

Mr. DOMENICI. Mr. President, we have cleared these amendments. We have worked on them on both sides. They are acceptable. I understand the distinguished minority leader is willing to accept them; is that correct?

Mr. REID. Mr. President, that is true.

Mr. DOMENICI. Mr. President, we have nothing further.

The PRESIDING OFFICER. Without objection, the amendments are considered en bloc and are agreed to en bloc.

The amendments were agreed to en bloc, as follows:

AMENDMENT 1687

(Purpose: To authorize the Secretary of the Interior to extend, on an annual basis, the repayment schedule of certain debt to facilitate Indian water rights settlements in the State of Arizona, with an offset)

On page 34, line 6, strike ''$56,525,000'' and insert ''$54,425,000''.

On page 42, between lines 5 and 6, insert the following:

SEC. 2___. FACILITATION OF INDIAN WATER RIGHTS.

The Secretary of the Interior may extend, on an annual basis, the repayment schedule of debt incurred under section 9(d) of the Act of August 4, 1939 (43 U.S.C. 485h(d)) to facilitate Indian water rights settlements in the State of Arizona.

AMENDMENT NO. 1688

On page 13 of the bill, line 21, before the period, insert the following:

: *Provided further,* That within funds provided herein, $500,000 may be used for completion of design and initiation of construction of the McCarran Ranch, NV, environmental restoration project

AMENDMENT NO. 1689

(Purpose: To set aside funding in connection with the harbor of Morehead City, North Carolina, for a project to disperse sand along Bogue Banks)

On page 16, line 12, before the period at the end, insert the following: '': *Provided further,* That the Secretary of the Army may use $3,000,000 of the funds provided under this heading to undertake, in connection with the harbor of Morehead City, North Carolina, a project to disperse sand along Bogue Banks''.

AMENDMENT NO. 1690

(Purpose: To provide for a transfer of funds to the Bureau of Reclamation to conduct a feasibility study for the purposes of providing water to Park City and the Snyderville Basin, Utah)

On page 2, line 18, after ''expended'' insert the following: '', of which $500,000, along with $500,000 of the unobligated balance of funds made available under this heading in the Energy and Water Appropriations Act, 2003, may be transferred to the Bureau of Reclamation to conduct a feasibility study for the purposes of providing water to Park City and the Snyderville Basin, Utah''.

AMENDMENT NO. 1691

(Purpose: To set aside funding for dredging and other operation and maintenance of the Rogue River, Gold Beach, Oregon)

On page 15, line 8, strike ''facilities:'' and insert ''facilities; and of which $500,000 may be available for dredging and other operation and maintenance of the Rogue River, Gold Beach, Oregon:''.

AMENDMENT NO. 1692

(Purpose: To provide funds for use in carrying out Great Lakes remedial action plans and sediment remediation programs under the Water Resources Development Act of 1990)

On page 31, between lines 7 and 8, insert the following:

SEC. 1___. GREAT LAKES REMEDIAL ACTION PLANS AND SEDIMENT REMEDIATION PROGRAMS.

Of the amounts made available by this title under the heading ''GENERAL INVESTIGATIONS'', not less than $1,500,000 may be available for Great Lakes remedial action plans and sediment remediation programs under section 401 of the Water Resources Development Act of 1990 (33 U.S.C. 1268 note; Public Law 101–640).

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

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

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, if I could have the attention of the distinguished chairman of the subcommittee, I think he would agree that we have spent all day working on this bill. It is an important bill with $27.3 billion in funding for some of the most important aspects this Government does.

We are now at a point where we are about to wrap this up. If there are Members who have amendments to offer, they should get over here within the next 40 minutes. If they are not here by then, we will assume there are no other amendments to be offered. We have other work that we need to do. There are negotiations going on on some amendments. Other than that, we are arriving at a point where we will move forward.

I have several amendments that I would like to send to the desk en bloc. I note that there are a number of amendments—in fact, two—in order, Nos. 1652 and 1660, which will be as modified.

We are so efficient that we are trying to agree to them twice. I don't think that is necessary. These have already been cleared.

I withdraw my request.

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

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

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENTS NOS. 1650, AS MODIFIED; 1653, AS MODIFIED; 1658, AS MODIFIED; 1669, AS MODIFIED; 1675, AS MODIFIED; 1679; 1685; AND 1696 THROUGH 1721, EN BLOC

Mr. REID. Mr. President, I send a series of amendments to the desk that have been cleared on both sides and ask for their consideration.

The PRESIDING OFFICER. The clerk will report the amendments.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for himself and Mr. DOMENICI, proposes amendments numbered 1650, as modified; 1653, as modified; 1658, as modified; 1669, as modified; 1675, as modified; 1679; 1685; and 1696 through 1721, en bloc.

Mr. REID. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

Mr. REID. Mr. President, I ask unanimous consent that the amendments be agreed to, en bloc. They have been cleared with my distinguished chairman.

Mr. DOMENICI. Mr. President, we have reviewed these one by one over the afternoon and they are all acceptable.

The PRESIDING OFFICER. Is there objection?

Without objection, the amendments are agreed to, en bloc.

The amendments were agreed to, as follows:

AMENDMENT NO. 1650, AS MODIFIED

(Purpose: To direct the Secretary of the Army to implement the project for ecosystem restoration, Gwynns Falls, Maryland)

On page 31, between lines 7 and 8, insert the following:

SEC. 1___. GWYNNS FALLS WATERSHED, BALTIMORE, MARYLAND.

The Secretary of the Army may implement the project for ecosystem restoration, Gwynns Falls, Maryland, in accordance with the Baltimore Metropolitan Water Resources-Gwynns Falls Watershed Feasibility Report prepared by the Corps of Engineers and the city of Baltimore, Maryland.

AMENDMENT NO. 1653, AS MODIFIED

(Purpose: To set aside funding for dredging and other operation and maintenance of the Umpqua River, Oregon)

On page 15, line 8, strike ''facilities:'' and insert ''facilities; and of which $500,000 may be available for dredging and other operation and maintenance of the Umpqua River, Oregon:''.

AMENDMENT NO. 1658, AS MODIFIED

(Purpose: To set aside funds for the Navajo electrification demonstration program)

On page 42, line 20, strike the period at the end and insert '', of which $3,000,000 may be available for the Navajo electrification demonstration program under section 602 of Public Law 106–511 (114 Stat. 2376).''

AMENDMENT NO. 1669, AS MODIFIED

(Purpose: To authorize the Secretary of the Army to carry out a joint project with Asotin County, Washington to construct a Snake River Confluence Interpretative Center near Clarkston, Washington)

On page 31, between lines 7 and 8, insert the following:

SEC. 1___. SNAKE RIVER CONFLUENCE INTERPRETATIVE CENTER, CLARKSTON, WASHINGTON.

(a) IN GENERAL.—The Secretary of the Army, acting through the Chief of Engineers (referred to in this section as the ''Secretary'') is authorized and may carry out a project to plan, design, construct, furnish, and landscape a federally owned and operated Collocated Civil Works Administrative Building and Snake River Confluence Interpretative Center, as described in the Snake River Confluence Center Project Management Plan.

(b) LOCATION.—The project—

(1) shall be located on Federal property at the confluence of the Snake River and the Clearwater River, near Clarkston, Washington; and

(2) shall be considered to be a capital improvement of the Clarkston office of the Lower Granite Project.

(c) EXISTING STRUCTURES.—In carrying out the project, the Secretary may demolish or relocate existing structures.

(d) COST SHARING.—

(1) TOTAL COST.—The total cost of the project shall not exceed $3,500,000 (excluding interpretative displays).

(2) FEDERAL SHARE.—The Federal share of the cost of the project shall be $3,000,000.

(3) NON-FEDERAL SHARE.—

(A) IN GENERAL.—The non-Federal share of the cost of the project—

(i) shall be $500,000; and

(ii) may be provided—

(I) in cash; or

(II) in kind, with credit accorded to the non-Federal sponsor for provision of all necessary services, replacement facilities, replacement land (not to exceed 4 acres), easements, and rights-of-way acceptable to the Secretary and the non-Federal sponsor.

(B) INTERPRETIVE EXHIBITS.—In addition to the non-Federal share described in subparagraph (A), the non-Federal sponsor shall fund, operate, and maintain all interpretative exhibits under the project.

AMENDMENT NO. 1675, AS MODIFIED

(Purpose: To authorize the Secretary to remove oil bollards in Burlington Harbor, VT)

After section 104, insert the following:

''The Secretary is authorized and may design, remove and dispose of oil bollards and associated debris in Burlington Harbor, VT, at full Federal expense.''

AMENDMENT NO. 1679

(Purpose: To provide for a report on administrative expenditures of the Secretary of Energy for the Energy Employees Occupational Illness Compensation Act)

On page 63, between lines 2 and 3 insert the following:

SEC. 3___. REPORT ON EXPENDITURES FOR THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION ACT.

Not later 180 days after the date of enactment of this Act, the Secretary of Energy shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on administrative expenditures of the Secretary for the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384 et seq.).

AMENDMENT NO. 1685

(Purpose: To direct the Secretary of the Army to complete the general reevaluation report for the project for flood damage reduction, Mill Creek, Cincinnati, Ohio)

On page 31, between lines 7 and 8, insert the following:

SEC. 1___. FLOOD DAMAGE REDUCTION, MILL CREEK, CINCINNATI, OHIO.

Not later than 1 year after the date of enactment of this Act, the Secretary of the Army, acting through the Chief of Engineers, shall complete the general reevaluation report for the project for flood damage reduction, Mill Creek, Cincinnati, Ohio.

AMENDMENT NO. 1696

(Purpose: To increase the authorization of appropriations for the provision of environmental assistance for the State of Mississippi)

On page 31, between lines 7 and 8, insert the following:

SEC. 1___.

Section 592(g) of the Water Resources Development Act of 1999 (Public Law 106–53; 113 Stat. 380) is amended by striking ''$25,000,000 for the period beginning with fiscal year 2000'' and inserting ''$100,000,000''.

AMENDMENT NO. 1697

(Purpose: To provide that the funds made available for a transmission study on the placement of 500 megawatt wind energy in North Dakota and South Dakota shall be nonreimbursable)

On page 54, line 19, before the period at the end, insert the following: '': PROVIDED FURTHER, That the $750,000 that is made available under this heading for a transmission study on the placement of 500 megawatt wind energy in North Dakota and South Dakota may be nonreimbursable''.

AMENDMENT NO. 1698

At the appropriate place, insert the following:

SEC. . Of the funds made available under Operation and Maintenance, General, an additional $500,000 may be made available to the Recreation Management Support Program to work with the International Mountain Bicycling Association to design, build, and maintain trails at Corps of Engineers projects.

AMENDMENT NO. 1699

(Purpose: To modify the project for flood control, Park River, Grafton, North Dakota)

On page 31, between lines 7 and 8, insert the following:

SEC. 1___. PARK RIVER, GRAFTON, NORTH DAKOTA.

Section 364(5) of the Water Resources Development Act of 1999 (113 Stat. 314) is amended—

(1) by striking ''$18,265,000'' and inserting ''$21,075,000''; and

(2) by striking ''$9,835,000'' and inserting ''$7,025,000''.

AMENDMENT NO. 1700

(Purpose: To direct the Western Area Power Administration to provide electrical power supply and delivery assistance to the local distribution utility as required to maintain proper voltage levels at the Big Sandy River Diffuse Source Control Unit)

On page 54, line 19, before the period, insert the following: '': *Provided further,* That, in accordance with section 203 of the Colorado River Basin Salinity Control Act (43 U.S.C. 1593), electrical power supply and delivery assistance may be provided to the local distribution utility as required to maintain proper voltage levels at the Big Sandy River Diffuse Source Control Unit''.

AMENDMENT NO. 1701

On page 13 of the bill, line 21, before the period, insert the following:

: *Provided further,* That within funds provided therein, $100,000 may be used for initiation of feasibility studies to address erosion along Bayou Teche, LA within the Chitimacha Reservation

AMENDMENT NO. 1702

(Purpose: To provide a definition of rural Utah for the purposes of the environmental assistance program)

On page 28, strike lines 13 through 25 and insert the following:

SEC. 115. Section 595 of the Water Resources Development Act of 1999 (113 Stat.383; 117 Stat. 142) is amended—

(1) by striking the section heading and inserting the following:

''SEC. 595. IDAHO, MONTANA, RURAL NEVADA, NEW MEXICO, AND RURAL UTAH.'';

(2) in subsection (a)—

(A) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(B) by striking (a) and all that follows through ''means—'' and inserting the following:

''(a) DEFINITIONS.—In this section:

''(1) RURAL NEVADA.—The term 'rural Nevada' means''; and

(C) by adding at the end the following:

''(2) RURAL UTAH.—The term 'rural Utah' means—

''(A) the counties of Box Elder, Cache, Rich, Tooele, Morgan, Summit, Dagett, Wasatch, Duchesne, Uintah, Juab, Sanpete, Carbon, Millard, Sevier, Emery, Grand, Beaver, Piute, Wayne, Iron, Garfield, San Juan, and Kane, Utah; and

''(B) the portions of Washington County, Utah, that are located outside the city of St. George, Utah.'';

(3) in subsections (b) and (c), by striking ''Nevada, Montana, and Idaho'' and inserting ''Idaho, Montana, rural Nevada, New Mexico, and rural Utah''; and

(4) in subsection (h), by striking ''2001—'' and all that follows and inserting ''2001 $25,000,000 for each of Idaho, Montana, New Mexico, and rural Utah, to remain available until expended.''.

At the appropriate place, insert the following:

SEC. . Of the funds made available under Construction, General, $1,500,000 may be made available work to be carried out under Section 560 of the Water Resources Development Act of 1999 (Public Law 106–53).

AMENDMENT NO. 1704

(Purpose: To set aside funding for a defense and security research center)

On page 44, line 14, before the period at the end, insert '', of which $3,000,000 may be available for a defense and security research center''.

AMENDMENT NO. 1705

(Purpose: To require the Secretary of the Interior and the Secretary of Energy to report to Congress on acquisitions made by each Department of articles, materials, or supplies manufactured outside the United States)

On page 34, line 10, strike the period at the end and insert ": *Provided further,* That of this amount, sufficient funds may be available for the Secretary of the Interior, not later than 60 days after the last day of the fiscal year, to submit to Congress a report on the amount of acquisitions made by the Department of the Interior during such fiscal year of articles, materials, or supplies that were manufactured outside the United States. Such report shall separately indicate the dollar value of any articles, materials, or supplies purchased by the Department of the Interior that were manufactured outside the United States, an itemized list of all waivers under the Buy American Act (41 U.S.C. 10a et seq.) that were granted with respect to such articles, materials, or supplies, and a summary of total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States. The Secretary of the Interior shall make the report publicly available by posting the report on an Internet website.".

On page 47, line 12, strike the period at the end and insert ": *Provided further,* That of this amount, sufficient funds shall be available for the Secretary of Energy, not later than 60 days after the last day of the fiscal year, to submit to Congress a report on the amount of acquisitions made by the Department of Energy during such fiscal year of articles, materials, or supplies that were manufactured outside the United States. Such report shall separately indicate the dollar value of any articles, materials, or supplies purchased by the Department of Energy that were manufactured outside the United States, an itemized list of all waivers under the Buy American Act (41 U.S.C. 10a et seq.) that were granted with respect to such articles, materials, or supplies, and a summary of total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States. The Secretary of Energy shall make the report publicly available by posting the report on an Internet website.".

AMENDMENT NO. 1706

On page 41, line 5, strike "655" and insert in lieu thereof "566".

AMENDMENT NO. 1707

On page 28, line 1 strike "105–227" and insert in lieu thereof "105–277".

AMENDMENT NO. 1708

(Purpose: To provide funding to preserve Department of Energy historical sites and other aspects of the history of its programs)

On page 48, line 8, after the word "expended:" insert the following:

"*Provided,* That the Secretary of Energy may use $1,000,000 of available funds to preserve historical sites associated with, and other aspects of the history of, the Manhattan Project"

AMENDMENT NO. 1709

(Purpose: To set aside funding for the Administration's Clean Energy Technology Exports Initiative)

On page 42, line 20, before the period at the end, insert ", of which $400,000 may be made available to the Office of International Market Development to carry out a program to implement, and serve as an administrative center in support of, the multi-agency Clean Energy Technology Exports Initiative".

AMENDMENT NO. 1710

(Purpose: To limit the availability of funds for the Advanced Concepts Initiative of the National Nuclear Security Administration pending a report on activities under the initiative)

At the end of title III, add the following:

SEC. 313. No funds appropriated or otherwise made available under this title under the heading "ATOMIC ENERGY DEFENSE ACTIVITIES" may be obligated or expended for additional and exploratory studies under the Advanced Concepts Initiative until 30 days after the date on which the Administrator for Nuclear Security submits to Congress a detailed report on the planned activities for additional and exploratory studies under the initiative for fiscal year 2004. The report shall be submitted in unclassified form, but may include a classified annex.

AMENDMENT NO. 1711

(Purpose: To set aside funding for the Great Lakes fishery and ecosystem restoration program)

On page 13, line 21, before the period at the end, insert the following: ": *Provided further,* That the Secretary of the Army may use at least $1,000,000 of the funds provided under this heading for the Great Lakes fishery and ecosystem restoration program".

AMENDMENT NO. 1712

At the appropriate place on page 42, after section 211, insert the following:

"SEC. XX. RESTORATION OF FISH AND WILDLIFE HABITAT AND PROVISION OF BOTTLED WATER FOR FALLON SCHOOLCHILDREN.

(a) IN GENERAL.—In carrying out section 2507 of Public Law 101–171, the Secretary of the Interior, acting through the Commissioner of Reclamation, shall—

(1) notwithstanding sec. 2507(b) of P.L. 101–171, provide $2.5 million to the State of Nevada to purchase water rights from willing sellers and make necessary improvements for Carson Lake and Pasture.

(2) provide $100,000 to Families in Search of Truth, Fallon, NV for the purchase of bottled water for schoolchildren in Fallon-area schools.

(b) LIMITATION.—The funds specified to be provided in (a)(1) shall only be provided by the Bureau of Reclamation when the title to Carson Lake and Pasture is conveyed to the State of Nevada; the waiver of sec. 2507(b) of P.L. 101–171 shall only apply to water purchases for Carson Lake and Pasture.

(c) ADMINISTRATION.—The Secretary of Interior, acting through the Commissioner of Reclamation, may provide financial assistance to State and local public agencies, Indian tribes, nonprofit organizations, and individuals to carry out this section and sec. 2507 of P.L. 101–171.

AMENDMENT NO. 1713

(Purpose: To direct the Secretary of the Army to provide technical, planning, design, and construction assistance for the Schuylkill River Park, Philadelphia, Pennsylvania)

At the appropriate place, insert the following:

SEC. . SCHUYLKILL RIVER PARK, PHILADELPHIA, PENNSYLVANIA.

The Secretary of the Army may provide technical, planning, design, and construction assistance for Schuylkill River Park, Philadelphia, Pennsylvania, in accordance with section 564(c) of the Water Resources Development Act of 1996 (Public Law 104–303; 110 Stat. 3785), as contained in the May 2000 report of the Philadelphia District based on regional economic development benefits, at a Federal share of 50 percent and a non-Federal share of 50 percent.

AMENDMENT NO. 1714

(Purpose: To direct the Secretary of the Interior to lease certain public lands in Wyoming)

On page 63, between lines 2 and 3 insert the following:

SEC. 3 . MARTIN'S COVE LEASE.

(a) DEFINITIONS.—In this section:

(1) BUREAU OF LAND MANAGEMENT.—The term "Bureau of Land Management", hereafter referred to as the "BLM", means an agency of the Department of the Interior.

(2) CORPORATION.—The term "Corporation" means the Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, located at 50 East North Temple Street, Salt Lake City, Utah.

(3) MARTIN'S COVE.—The term "Martin's Cove" means the area, consisting of approximately 940 acres of public lands in Natrona County, Wyoming as depicted on the Martin's Cove map numbered MC–001.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(b) LEASE.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Secretary may enter into an agreement with the Corporation to lease, for a term of 25 years, approximately 940 acres of Federal land depicted on the Martin's Cove map MC–001. The Corporation shall retain the right of ingress and egress in, from and to any part of the leasehold for its use and management as an important historical site.

(2) TERMS AND CONDITIONS.—

(A) SURVEY.—As a condition of the agreement under paragraph (1), the Corporation shall provide a boundary survey to the Secretary, acceptable to the Corporation and the Secretary, of the parcels of land to be leased under paragraph (1).

(B) ACCESS.—

(i) IN GENERAL.—The Secretary and the Corporation shall enter into a lease covenant, binding on any successor or assignee that ensures that, consistent with the historic purposes of the site, public access will be provided across private land owned by the Corporation to Martin's Cove and Devil's Gate. Access shall—

(I) ensure public visitation for historic, educational and scenic purposes through private lands owned by the Corporation to Martin's Cove and Devil's Gate;

(II) provide for public education, ecologic and preservation at the Martin's Cove site;

(III) be provided to the public without charge; and

(IV) permit the Corporation, in consultation with the BLM, to regulate entry as may be required to protect the environment and historic values of the resource at Martin's Cove or at such times as necessitated by weather conditions, matters of public safety and nighttime hours.

(C) IMPROVEMENTS.—The Corporation may, upon approval of the BLM, improve the leasehold as may become necessary from time to time in order to accommodate visitors to the leasehold.

(D) ARCHAEOLOGICAL PRESERVATION.—The Corporation shall have the obligation to protect and maintain any historical or archaeological artifacts discovered or otherwise identified at Martin's Cove.

(E) VISITATION GUIDELINES.—The Corporation may establish, in consultation with the BLM, visitation guidelines with respect to such issues as firearms, alcoholic beverages, and controlled substances and conduct consistent with the historic nature of the resource, and to protect public health and safety.

(F) NO ABRIDGEMENT.—The lease shall not be subject to abridegment, modification, termination, or other taking in the event any

surrounding area is subsequently designated as a wilderness or other protected areas. The lease shall contain a provision limiting the ability of the Secretary from administratively placing Martin's Cove in a restricted land management status such as a Wilderness Study Area.

(G) RIGHT OF FIRST REFUSAL.—The Corporation shall be granted a right of first refusal to lease or otherwise manage Martin's Cove in the event the Secretary proposes to lease or transfer control or title of the land to another party.

(H) FAIR MARKET VALUE LEASE PAYMENTS.—The Corporation shall make lease payments which reflect the fair market rental value of the public lands to be leased, provided however, such lease payments shall be offset by value of the public easements granted by the Corporation to the Secretary across private lands owned by the Corporation for access to Martin's Cove and Devil's Cove.

(I) RENEWAL.—The Secretary may offer to renew such lease on terms which are mutually acceptable to the parties.

(c) MINERAL WITHDRAWAL.—The Secretary shall retain the subsurface mineral estate under the leasehold, provided that the leased lands shall be withdrawn from all forms of entry, appropriations, or disposal under the public land laws and disposition under all laws relating to oil and gas leasing.

(d) NO PRECEDENT SET.—This Act does not set a precedent for the terms and conditions of leases between or among private entities and the United States.

(e) VALID AND EXISTING RIGHTS.—The Lease provided for under this section shall be subject to valid existing rights with respect to any lease, right-of-way, permit, or other valid existing rights to which the property is subject.

(f) AVAILABILITY OF MAP.—The Secretary shall keep the map identified in this section on file and available for public inspection in the Casper District Office of the BLM in Wyoming and the State Office of the BLM, Cheyenne, Wyoming.

(g) NEPA COMPLIANCE.—The Secretary shall comply with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in carrying out this section.

AMENDMENT NO. 1715

(Purpose: To appropriate funds to develop an environmental impact statement for introducing non-native oyster species into the Chesapeake Bay)

: *Provided*, That using $200,000 appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, may develop an environmental impact statement for introducing non-native oyster species into the Chesapeake Bay. During preparation of the environmental impact statement, the Secretary may establish a scientific advisory body consisting of the Virginia Institute of Marine Science, the University of Maryland, and other appropriate research institutions to review the sufficiency of the environmental impact statement. In addition, the Secretary shall give consideration to the findings and recommendations of the National Academy of Sciences report on the introduction of non-native oyster species into the Chesapeake Bay in the preparation of the environmental impact statement. Notwithstanding the cost sharing provisions of Section 510(d) of the Water Resources Development Act of 1996, 110 Stat. 3760, the preparation of the environmental impact statement shall be cost shared 50% Federal and 50% non-Federal, for an estimated cost of $2,000,000. The non-Federal sponsors' may meet their 50% matching cost share through in-kind services, provided that the Secretary determines that work performed by the non-Federal sponsors is reasonable, allowable, allocable, and integral to the development of the environmental impact statement.

AMENDMENT NO. 1716

On page 14, line 26, strike ''$1,949,000,000'' and insert in lieu thereof ''2,014,000,000''.

AMENDMENT NO. 1717

On page 42, at the end of line 20 insert:

: Provided, That of the funds made available for the Office of Electricity and Energy Assurance, the Office may provide grants to states and regional organizations to work with system operators, including regional transmission organizations and independent system operators, on transmission system planning. The Office may require that grantees consider a full range of technology and policy options for transmission system planning, including energy efficiency at customer facilities and in transmission equipment, customer demand response, distributed generation and advanced communications and controls. *Provided further,* That of the funds made available for the Office of Electricity and Energy Assurance, the Office may develop regional training and technical assistance programs for state regulators and system operators to improve operation of the electricity grid.

AMENDMENT NO. 1718

(Purpose: To provide additional funding for the project for Passaic River Steambank Restoration, Minish Park, New Jersey, with an offset)

On page 10, line 9, strike ''That'' and all that follows through line 12 and insert the following: ''That the Secretary of the Army, acting through the Chief of Engineers, may use $1,000,000 of the funds made available under this heading to continue construction of the project for Passaic River Streambank Restoration, Minish Park, New Jersey, and $6,500,000 of the funds made available under this heading to carry out the project for the Raritan River Basin, Green Brook Sub-Basin, New Jersey: *Provided further,* That the Secretary of the Army,''

AMENDMENT NO. 1719

(Purpose: To require the Secretary of Labor to provide technical and managerial assistance to the Secretary of Energy to carry out claims-related activities under the Energy Employees Occupational Illness Compensation Program Act 2000)

At the appropriate place, insert the following:

SEC. ___. (a) MEMORANDUM OF AGREEMENT.—Not later than 45 days after the date of enactment of this Act, the Secretary of Energy and the Secretary of Labor shall enter into a Memorandum of Agreement (referred to in this section as the ''MOA'') under which the Secretary of Labor shall agree to provide technical and managerial assistance pursuant to subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385o et seq.).

(b) REQUIREMENT.—Under the MOA entered into under subsection (a), the Secretary of Labor shall, not later than 90 days after the date of enactment of this Act, assume management and operational responsibility for the development and preparation of claims filed with the Department of Energy under subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385o et seq.), consistent with the regulations under part 852 of title 10, Code of Federal Regulations, including the development of information necessary for the informed consideration of such claims by a physicians panel (which shall include work histories, medical records, and exposure assessments with respect to toxic substances).

(c) PROCUREMENT OF SERVICES.—The Secretary of Labor may procure temporary services in carrying out the duties of the Secretary under the MOA.

(d) DUTIES OF SECRETARY OF ENERGY.—Under the MOA entered into under subsection (a), the Secretary of Energy shall—

(1) consistent with subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385o et seq.), manage physician panels and secure necessary records in response to requests from the Secretary of Labor; and

(2) subject to the availability of appropriations, transfer funds pursuant to requests by the Secretary of Labor.

(e) SUBMISSION TO CONGRESS.—The MOA entered into under subsection (a) shall be submitted to the appropriate committees of Congress and made available to the general public in both printed and electronic forms.

AMENDMENT NO. 1720

(Purpose: To prohibit the use of funds for the Great Lakes Sediment Transport Models)

On page 15, line 16, after ''2004'' insert the following: '': *Provided further,* That none of the funds appropriated under this heading may be used for the Great Lakes Sediment Transport Models''.

AMENDMENT NO. 1721

(Purpose: To reinstate and transfer a hydroelectric license to permit redevelopment of a hydroelectric project in the State of New York, and for other purposes)

On page 63, between lines 2 and 3 insert the following:

SEC. 3___. REINSTATEMENT AND TRANSFER OF THE FEDERAL LICENSE FOR PROJECT NO. 2696.

(a) DEFINITIONS.—

(1) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(2) TOWN.—The term ''town'' means the town of Stuyvesant, New York, the holder of Federal Energy Regulatory Commission Preliminary Permit No. 11787.

(b) REINSTATEMENT AND TRANSFER.—Notwithstanding section 8 of the Federal Power Act (16 U.S.C. 801) or any other provision of that Act, the Commission shall, not later than 30 days after the date of enactment of this Act—

(1) reinstate the license for Project No. 2696; and

(2) transfer the license to the town.

(c) HYDROELECTRIC INCENTIVES.—Project No. 2696 shall be entitled to the full benefit of any Federal law that—

(1) promotes hydroelectric development; and

(2) that is enacted within 2 years before or after the date of enactment of this Act.

(d) CO-LICENSEE.—Notwithstanding the issuance of a preliminary permit to the town and any consideration of municipal preference, the town may at any time add as a co-licensee to the reinstated license a private or public entity.

(e) PROJECT FINANCING.—The town may receive loans under sections 402 and 403 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2702, 2703) or similar programs for the reimbursement of the costs of any feasibility studies and project costs incurred during the period beginning on January 1, 2001 and ending on December 31, 2006.

(f) ENERGY CREDITS.—Any power produced by the project shall be deemed to be incremental hydropower for purposes of qualifying for energy credits or similar benefits.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1650, AS MODIFIED

Mr. SARBANES. Mr. President, the purpose of this amendment is to ensure that the Army Corps of Engineers meets its responsibilities to the restoration of the Baltimore metropolitan area ecosystem restoration project. The amendment authorizes and directs the Corps to implement the project in accordance with the Baltimore Metropolitan Water Resources—Gwynns Falls Feasibility Report, prepared by the Army Corps of Engineers and the city of Baltimore.

For 10 years, the U.S. Army Corps of Engineers has been studying water resource problems in the Baltimore metropolitan area. In 1994, the Baltimore District completed a reconnaissance report which concluded that there has been extensive degradation to the marine, aquatic, wetland, riparian and terrestrial habitats in the Baltimore metropolitan area. Over the years, rapid growth of the area, filling of wetlands, and previous construction of Federal works to meet flood control and navigation needs, among other things, have contributed to the degradation of the streams that drain the Baltimore basin. The report identified a Federal interest in restoring the ecosystem of six watersheds, with the Gwynns Falls watershed selected first for further study.

The city of Baltimore agreed to share with the Corps in the cost of the next phase of the study process—a $1.6 million feasibility study. During the course of that more detailed study, the Corps found that there was a significant loss of stream water and groundwater into sewers located in the stream channels and, in order to restore the Gwynns Falls ecosystem and more than 2 million gallons of water per day to the watershed, the cracks in these sewers must be repaired. In December 2001, Corps Headquarters agreed that the sewer line rehabilitation work was integral to—and should be included in—the ecosystem restoration project and was within the Corps' environmental restoration authority. In fact, the Corps found that it was far less expensive to line the sewers and seal the manholes than undertake other alternatives such as channel lining and artificial watering. The draft Baltimore Metropolitan Water Resources Gwynns Falls Watershed Feasibility Report, completed in January 2002, recommended sewer system rehabilitation as a key part of the environmental restoration projects for Gwynns Falls. It was anticipated at that time, that the feasibility report would be completed by May 2002 and the project would be authorized for construction in the Water Resources Development Act of 2002.

In 2001, the city of Baltimore and EPA began the process of negotiating a consent decree to address the city's collection system overflow problem which was polluting area streams and waterways in violation of the Clean Water Act. Baltimore signed the consent decree with EPA in April 2002 making the city legally responsible for approximately $900 million in sewer infrastructure improvements throughout the city, including fixing the sewer system in the Gwynns Falls watershed by the year 2007. The city did so with the understanding that the Corps would share in the approximately $13 million cost of sewer rehabilitation in this area.

Months went by and no action was taken on the feasibility report until April 2003, when the Office of the Assistant Secretary of the Army effectively reneged on the agreement to participate in this project. Although the office, once again, concurred that the sewer work was integral to the ecosystem restoration project, it claimed that the sewer rehabilitation portion of the recommended project was now the legal responsibility of the city—because it signed the consent decree—and therefore it was inappropriate for the Federal Government to cost-share in this part of the project. Despite having acted in good faith to comply with Federal law and participating for years in studies with the Army Corps of Engineers with the intended purpose of improving the urban ecosystem in this area, the city of Baltimore is now being penalized for signing this consent decree. Throughout this process, the city was never appraised by the Corps that, if it signed the consent degree, the Corps would not be able to share in the cost of this project. Now Baltimore is left with the prospect of either attempting to remove the Gwynns Falls project from the consent decree—an uncertain prospect at best—or somehow overcoming a Corps planning guidance document. That is what we are seeking to do with this amendment.

It is important to point out that there is no other instance that we have been able to identify in Federal law or regulation, that prohibits a municipality from using Federal funds or programs to help achieve compliance with a consent decree. Indeed, a number of cities have used the Clean Water State Revolving Fund or EPA State and Tribal Assistance Grants for this purpose. There is no logical reason that the Corps of Engineers' program should not follow suit.

Why offer the amendment to this measure? First of all, it does not appear that the Senate will consider a Water Resources Development Act this year. Second, time is running out for the city of Baltimore. In order to meet the 2007 consent decree deadline and to avoid future penalties for sewage discharges, the city must begin design and construction of the Gwynns Falls project shortly.

This amendment simply directs the Secretary to implement the project in accordance with the original plans in the Gwynns Falls Feasibility Study.

AMENDMENT NO. 1709

Mr. BYRD. Mr. President, I have strongly supported efforts to advance opportunities to open markets abroad to an array of clean energy technologies. At my urging, the Bush administration, in October 2002, released the Clean Energy Technology Exports, CETE, strategy. This action plan outlined a 5-year, nine-agency initiative that is intended to ''increase U.S. clean energy technology exports to international markets through increased coordination among Federal agency programs and between these programs and the private sector.'' The CETE directive is geared at helping to address three major challenges in global energy policy: increased U.S. competition in developing country markets; environmental sustainability, including climate change; and energy security.

Even though the participating Federal agency partners released this strategic plan last year, no funding has been identified by any of the agencies to implement the CETE strategy. All too often, this is the case with multi-agency initiatives that do not have the explicit support of the administration, and I fear that, once again, this is the case. At this point, little, if anything new, is being done by this administration to promote clean energy technologies overseas.

My amendment is a small step that is intended to get the ball rolling by establishing an administrative center. A truly effective program of this magnitude deserves significantly more attention and funding, and the U.S. is missing a huge opportunity to capture a greater share of global clean energy technology markets. However, we must start somewhere, and my amendment is a practical one. If the CETE strategic plan is going to be successful, then such an initiative requires a focal point—a one-stop-shop, so to speak—to allow industries and organizations with interests to more effectively access the services of the Federal Government.

Thus, my amendment provides $400,000 in funding for the Office of International Market Development within the Department of Energy to help carry out the task. While this center is to be physically housed at the Department of Energy, DOE, the center's mission is to help carry out the multi-agency CETE strategy. I also strongly urge all participating agencies such as the Department of Commerce, U.S. Agency for International Development, and others to contribute staff and other appropriate resources to get this center up and running.

This is just a start on a long overdue Federal initiative. But, if we are serious about addressing the immense global energy and environmental challenges that we commonly share with other nations, this initiative must get much greater attention and far more support from this administration.

AMENDMENT NO. 1715

Mr. SARBANES. Mr. President, I am pleased to join with Senator WARNER in offering this amendment directing the Secretary of the Army to develop an environmental impact statement, EIS,

to evaluate the risks and benefits of introducing non-native oysters in Chesapeake Bay.

The Chesapeake Bay was once the largest producer of oysters in the world, providing some 20 million bushels annually at the turn of the century. The once abundant oyster populations not only sustained an important part of our economy, providing jobs for thousands of oystermen and others in the seafood and maritime industries, but served as filters, cleaning the entire volume of the Bay's waters every three to six days and provided habitat and sustenance for many of the Bay's living resources. Today, the Bay's oyster population is only one percent of what it was a century ago—the victim of the deadly diseases MSX and Dermo as well as over-harvesting and the loss of habitat. Maryland's watermen and the oyster industry are being threatened with economic extinction and scientists estimate that it now takes the current population of oysters nearly a year to filter the Bay's waters.

In 1999, scientific experts from Maryland and Virginia reached a consensus on how to restore oysters which contained two essential components—the construction of three-dimensional oyster reefs and the establishment of permanent reef sanctuaries—to create habitat and provide for the growth and increased fecundity of oyster populations. This approach was embraced in the Chesapeake 2000 Bay Agreement which set an ambitious goal of increasing oyster abundance by tenfold by the year 2010. Over the past three years, our Chesapeake Bay area Congressional Delegation has worked closely together to secure the necessary authorizations and appropriations of approximately $5 million a year through the U.S. Army Corps of Engineers and NOAA to help the States of Maryland and Virginia implement this strategy. Indeed, we are delighted that the Senate energy and water appropriations bill, which we are considering today, provides $4.5 million an increase of $1.5 million over the fiscal 2003 level and President's budget request to continue this effort. By restoring the physical oyster habitat, creating new oyster reefs and planting disease-free oysters on these reefs, it is our hope that this project will increase native oyster populations and ultimately help to ensure the economic and environmental revival of the Bay.

In order to expedite the process of repopulating oysters in Chesapeake Bay, officials in Maryland and Virginia have recently proposed introducing a non-native Asian oyster, *Crassostrea ariakensis,* which is quick growing and more disease resistant into the Bay. However, because of differing opinions about the risks and benefits involved, the Chesapeake Bay Commission a tri-state legislative commission—requested that the National Academies of Science National Research Council, NRC, undertake a study of the pros and cons of introducing this non-native species. On August 14, 2003, the National Research Council released this report entitled ''Non-native Oysters in Chesapeake Bay'' which concluded that introducing a reproductive population of the Asian oyster, *Crassostrea ariakensis,* in Chesapeake Bay should be delayed until more is known about the potential environmental risks.

The NRC report found that ''[I]t is not possible to predict if a controlled introduction of reproductive *C. ariakensis* will improve, further degrade, or have no impact on either the oyster fishery or the ecology of the Chesapeake Bay.'' The report recommended contained aquaculture of sterile *C. ariakensis* as an ''interim action that provides an opportunity for researchers to obtain critical biological and ecological information on the non-native oyster required for risk assessment.'' It included detailed recommendations for biological, ecological, and socio-economic research that should be conducted to better inform public decisionmaking about the Asian oyster.

In a letter dated July 22, 2003, to the U.S. Army Corps of Engineers the Secretaries of the Virginia and Maryland Departments of Natural Resources requested that the Corps coordinate development of an environmental impact statement to evaluate the States' proposal to introduce reproductively capable Asian oysters in the waters of Chesapeake Bay. The Corps responded that it cannot initiate an EIS unless specifically authorized and funded by Congress to do so. This is what our amendment seeks to accomplish. The amendment provides $200,000 in Federal funds to initiate the study, which must be matched by the States. It further directs the Secretary to establish a scientific advisory body consisting of the Virginia Institute of Marine Science, the University of Maryland, and other appropriate research institutions to review the sufficiency of the environmental impact statement. In addition, it directs the Secretary to consider the findings and recommendations of the National Academy of Sciences in the preparation of the environmental impact statement.

I urge adoption of the amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DOMENICI. Mr. President, I say to our fellow Senators, we are finished with the exception of a colloquy or two, which are going to be ready shortly. However, we have been informed that Senator JOHN MCCAIN of Arizona desires to offer an amendment relative to a provision in the bill. We are trying to contact him to let him know we are finished but for his amendment. If we can get him here—and we are going to try our best—we will ask him to offer his amendment. We will vote on it and then vote on final passage and we will be finished, which means that, on the request of our leader that we be finished by 7 o'clock tonight, we should do that easily, if we can find the Senator and start that process.

Mr. REID. Mr. President, will the distinguished chairman allow me to speak?

Mr. DOMENICI. I would be pleased to.

Mr. REID. Mr. President, I ask unanimous consent that there be no other amendments in order except those cleared by the two managers of the bill; and the Senator from Arizona is going to offer an amendment. I ask unanimous consent that those be the only amendments in order.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Mr. President, reserving the right to object—and I will not—I just want to say I agree because we have been telling the Senate that for a number of hours today, and now the time has come. We want to finish tonight, and there should not be any other amendments. They should have brought them here, if they have them. So I think the consent request is well taken. It should be granted.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BURNS. 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. BURNS. Mr. President, I ask unanimous consent to speak as in morning business for the time I shall need. If any other pending business comes up, I will gladly step aside.

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

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

LOS ANGELES RIVER REVITALIZATION

Mrs. BOXER. Mr. President, I would like to engage in a colloquy with the distinguished Senator from Nevada, Senator REID, the ranking member of the Energy and Water Appropriations Subcommittee.

I want to thank Senators DOMENICI and REID for their hard work in developing this legislation. In particular, I appreciate the attention that they have given to the infrastructure needs of California, as well as to the overall importance of this bill for those of us representing western States.

Los Angeles, the largest metropolitan area in the western United States, faces many challenges. Local community leaders are working hard to revitalize the areas surrounding the Los

Angeles River. The river, reinforced with concrete to provide flood control benefits, runs 51 miles through much of urban Los Angeles.

Both the Senate and House of Representatives include funding in the Energy and Water Appropriations bills for operation and maintenance of the Los Angeles County Drainage Area project. However, the House Appropriations Committee also included language directing $2 million of additional funding to be used to ''support Corps of Engineers assistance in local activities to revitalize the project areas for public safety, environmental restoration, recreation, aesthetics, community improvement, and related purposes.''

This additional funding would provide essential support for local leaders and community stakeholders, working in conjunction with the Army Corps of Engineers, to move forward with this critical project. I urge the Senate conferees to agree with the House funding level for this project.

I know how much the Senator from Nevada cares about improving our communities and protecting our precious natural resources. This project works toward achieving both of these important goals.

Mr. REID. I agree with the Senator from California that our communities need the tools and resources to develop infrastructure projects that revitalize the environment, as well as the economy. I also agree that the project described by Senator BOXER has the potential to offer many benefits to the Los Angeles area and I will work to support this in conference.

Mrs. BOXER. I thank the Senator for his support.

DWORSHAK RESERVOIR

Mr. CRAPO. Mr. President, I want to express my appreciation for your efforts, and those of the subcommittee ranking member, Senator REID, in working with Senator CRAIG and me to support the important work of the U.S. Corps of Engineers in the Clearwater River Valley to mitigate damages caused by fluctuating levels in the Dworshak Reservoir.

As my colleagues know, the challenges of responding to the riverine needs of endangered salmon have been an enormous strain on the communities of the Pacific Northwest. We all share the commitment to restore Pacific Northwest salmon. This is a national interest. However, the efforts to restore the runs have a disproportionate and direct impact in communities in Idaho and the Pacific Northwest.

The town of Orofino in the Clearwater River Valley of Idaho is just such a community. The town sits at the base of the Dworshak Reservoir, which is capped by a Corps-managed dam. The Corps periodically uses water from Dworshak Reservoir to help adjust temperatures in the downstream rivers when salmon are making their runs to and from the ocean.

When spills are required, the levels of Dworshak Reservoir fall. Sometimes, this can amount to drops of approximately 90 feet. A 90-foot drop is catastrophic to recreational opportunities provided by the reservoir. Boat docks and trailer ramps no longer reach the water, beaches dangle precariously above the waterline, and muddy banks exposed for as far as the eye can see.

The Corps has offered its help in mitigating the economic hardships caused by its actions in periodic reductions in reservoir water levels. I applaud that offer. I also commend Senator DOMENICI and Senator REID for providing the extra resources in the operations and maintenance account for the Dworshak Reservoir in this legislation to accommodate those mitigation efforts. I yield to the distinguished chairman to elaborate on that point.

Mr. DOMENICI. I want to echo the comments of the Senator about the importance of these resources. We have provided an additional $1 million above the President's request for the O&M function for this specific economic mitigation commitment for the community. It is the committee's intent that the Corps should use these resources to help address the recreational needs of the Clearwater River Valley community resulting from the alterations of the water level in the reservoir.

I believe the senior senator from Idaho, and a member of the subcommittee, also would like to be heard on this point.

Mr. CRAIG. I echo the words of my colleague from Idaho on the importance of this enhanced funding. Few areas in the Pacific Northwest suffer more directly or as clearly by the changing needs of migrating salmon.

I have been to Orofino and surrounding communities several times and have noted the rise and fall in fortunes of the nearby towns in accordance with the levels of water in the reservoir. As the Nation continues to press on this and other Pacific Northwest communities to take steps to revive protected salmon species, the Nation should also assist towns disproportionately affected by that national call to action. I appreciate the committee chairman securing these resources to recognize that commitment.

It is my understanding that it is the committee's intention that these resources are provided to the Corps to be spent in the community in a manner that helps restore the economic base of the surrounding towns. These activities would include environmental measures and the establishment of a functional large boat moorage. Is this correct?

Mr. DOMENICI. That is the committee's intention, and I appreciate your commitment to this important provision. I also appreciate Senator CRAPO's desire in helping to clarify these issues so that the needs of the Clearwater River Valley communities can be effectively addressed. I yield back to Senator CRAPO.

Mr. CRAPO. I thank the chairman, and I yield back the floor.

SECTION 104

Mr. JEFFORDS. I have some concerns with the language in section 104. These are, I believe, technical concerns. My understanding is that the Corps of Engineers, in order to more effectively manage their resources, is interested in having continuing contract authority for congressionally authorized water resource studies. I have no problem with that, but I am not sure that the language is correct in 104.

Mr. REID. That is my understanding as well, and I believe that we need to work together and with the Corps to draft language that is exactly correct. I will work with the Senator from Vermont to make the necessary changes in conference.

Mr. DOMENICI. I will also work with my colleagues to make the necessary changes, as I do not believe there is a substantive disagreement.

Mr. JEFFORDS. I thank my colleagues for their cooperation, and I look forward to working on this language in conference.

HIGH-LEVEL WASTE CLEANUP

Mr. COCHRAN. Mr. President, Chairman DOMENICI knows I have been concerned about DOE's high-level waste cleanup program from its inception. Shortly after our committee concluded action on the bill, the GAO issued a report, entitled, ''Challenges to Achieving Potential Savings in DOE's High-Level Waste Cleanup Program.'' In light of the language in our committee report on the program, the GAO provides a valuable and timely perspective on the nuclear waste clean-up program and confirms many of my concerns, as well as those expressed by our committee during our hearings.

Mr. President, as stated in our committee's report:

The Committee notes with concern the recent notification by the Department that the Hanford Waste Treatment Plant, Richland, Washington, construction project baseline would increase from $4,350,000,000 to $5,781,000,000, an increase of over $1,400,000,000. The relative lack of outrage over a baseline change of that magnitude speaks volumes about what the Congress and public have come to expect from the Department's clean-up program. The tank waste treatment project has a long and sordid history that indicates both the magnitude of the task before the Department, as well as the Department's historic combination of overly optimistic cost estimates coupled with consistent project mismanagement. The Committee notes its concern in the demonstrated pattern of Departmental officials announcing reform of some aspect of the clean-up program, only to depart and be replaced by a new set of officials coming before the Committee to describe dramatic cost overruns on the project baselines promised by their predecessors, and claiming no responsibility for the assumptions underlying those previous commitments.

The Department is now into the second year of entering into new acceleration and reform agreements consistent with the policy conclusions of the Secretary's 2001 top-to-bottom review of the environmental clean-up program. The efforts is commendable in its success in focusing the Department and its stakeholders on the importance

of completing clean-up activities decades earlier than planned. The acceleration agreements entered into at the various clean-up sites have allowed the Department to book huge paper out-year savings and acceleration of completion dates. For example, the Department is claiming savings of $12,000,000,000 and 20 years at the Savannah River Site, South Carolina; $30,000,000,000 and 35 years at Hanford, Washington; $2,000,000,000 and 6 years at Oak Ridge, Tennessee; and $19,000,000,000 and 35 years at Idaho. In many cases the savings are based on assumed changes in law, yet-to-be reformed regulatory environments, contractor savings, and other highly optimistic assumptions. The Department has had its successes, most notably Rocky Flats, Colorado, and should be commended. But even with such highlights, the weight of the historical record leaves the Committee to question who will be around in the future (other than the taxpayers) when these estimated cost savings will inevitably be revised.

Mr. President, I respect Secretary Roberson's efforts to encourage innovation in the program. Last February, she proposed a new initiative aimed at accelerating cleanup at DOE's sites and focusing on more rapid reduction of the considerable environmental risks. She projects this will cut years off the program and produce $63 billion in savings.

Now that GAO has issued its first report on the acceleration initiative, I hope the chairman will join me in examining their findings and recommendations and identifying actions that we may recommend to the conference.

Mr. DOMENICI. The Senator has my assurance that GAO's report and recommendations will be carefully analyzed and that I will work with him to ensure that they are considered as we work toward conference.

Mr. COCHRAN. I thank the chairman and urge that he give special attention to the following GAO recommendation:

DOE's accelerated cleanup initiative should mark the beginning, not the end, of DOE's efforts to identify other opportunities to improve the program by accomplishing the work more quickly, more effectively, or at less cost. As DOE continues to pursue other management improvements, it should reassess certain aspects of its current management approach, including the quality of the analysis underlying key decisions, the adequacy of its approach to incorporating new technologies into projects, and the merits of a fast-track approach to designing and building complex nuclear facilities. Although the challenges are great, the opportunities for program improvements are even greater. Therefore, DOE must continue its efforts to clean up its high-level waste while demonstrating tangible, measurable program improvements.

This recommendation underscores my view that DOE should continue to develop and test new technologies, which may have the potential to provide price and schedule savings. Since 1996, our committee has recommended that DOE investigate alternative melting technologies, including the advanced vitrification system, to back-up the baseline system. These recommendations came from the National Academy of Sciences and from DOE's own sponsored studies.

Pursuing backup systems has always made sense. As GAO points out, the risks inherent in the chemical composition of the tanks require a backup approach as insurance. As our committee report explains, ''the weight of the historical record'' often requires us to ask ''who will be around in the future (other than the taxpayers) when these estimated cost savings will inevitably be revised.''

Mr. DOMENICI. I share the Senator's concerns and will inquire about GAO findings and will join you in urging the Department to give priority to developing technologies that are different from the baseline system and could provide an insurance policy.

Mr. COCHRAN. Mr. President, I appreciate the Senator's response and request his efforts in conference to encourage DOE to evaluate and demonstrate backup technologies that have shown potential to provide cost and schedule savings in the program.

Mr. DOMENICI. I appreciate the Senator raising these issues, and I urge the Department to carefully consider his thoughtful comments and recommendations.

Mr. COCHRAN. I thank the chairman and appreciate his leadership.

U.S. ARMY CORPS OF ENGINEERS' OPERATION AND MAINTENANCE FUNDING FOR NOXIOUS WEED CONTROL AT LAKE SAKAKAWEA, GARRISON DAM, ND

Mr. CONRAD. Mr. President, I commend the leadership of the Appropriation Committee, and particularly subcommittee Chairman DOMENICI and Senator REID for their work on this bill. I bring to the chairman's attention a troubling problem we have in North Dakota around Lake Sakakawea, a reservoir controlled by the U.S. Army Corps of Engineers. As water levels drop, more of the land around the lake owned by the Corps becomes exposed, which is a perfect habitat for noxious weeds. In fact, an additional 140,000 acres have become exposed due to low water levels causing explosive growth.

The spread of noxious weeds is directly impacting farmers, ranchers, and other landowners in the vicinity of Lake Sakakawea. These landowners are responsible for controlling noxious weeds on their land; however, their efforts are futile when their land can be easily contaminated from weeds on Corps land. Unless the Corps has more resources to fight the noxious weeds, landowners will continue to face an uphill battle.

Mr. REID. I, too, am concerned about the situation around Lake Sakakawea and appreciate my colleague from North Dakota for bringing this to our attention. I agree that the Corps of Engineers has an obligation to address it, and I would be happy to work with my colleagues to identify additional funds to tackle the noxious weeds around Lake Sakakawea.

Mr. DORGAN. Mr. President, I thank my colleague from Nevada for his support, and I would like to work with him and the chairman of our subcommittee to find additional funding to combat this growing problem in the energy and water conference. Right now, the Corps is stretched thin financially and, as a result, it cannot keep pace with this expansive and growing problem. The Corps has a clear responsibility to address this problem and it cannot be ignored. It is my hope that the Corps will dedicate funds to controlling this weed problem from the money that would be provided from the amendment offered by Chairman DOMENICI and Senator REID that would add $65 million to the Corps operations and maintenance budget. The low lake level is due to the persistent drought plaguing much of the West, and I believe that the Corps has a responsibility to address problems on its lands resulting from weather-related conditions.

Mr. DOMENICI. I recognize the situation faced by those around Lake Sakakawea, and I will work with you to address this problem as we move this bill to the Energy and Water Appropriations conference.

SECTION 310

Mr. BINGAMAN. Mr. President, will the chairman yield for a question?

Mr. DOMENICI. I will be happy to yield.

Mr. BINGAMAN. Mr. President, section 310 of the current legislation directs the Secretary of Energy to file a permit modification to the Waste Isolation Pilot Plant's, WIPP, Waste Analysis Plan, WAP. Section 310(a) requires that for determining compliance with the Solid Waste Disposal Act, 42 U.S.C. 6901 et. seq., and any other applicable laws, all waste received for storage and disposal shall be limited in confirmation that it contains no ignitable, corrosive or reactive waste through the use of radiography or visual examination of a statistically representative population of waste; and to review of the waste stream profile form to verify that the waste contains no ignitable, corrosive or reactive waste. Section 310(b) requires that compliance shall be monitored exclusively in the WIPP underground rooms through airborne monitoring of volatile inorganic compounds.

Mr. DOMENICI. Mr. President, the Senator is correct.

Mr. BINGAMAN. Mr. President, is the chairman aware of an ongoing study, due December 2003, by the National Academy's Board on Radioactive Waste Management regarding waste characterization requirements for contact handled transuranic waste to be disposed of at the WIPP facility?

Mr. DOMENICI. Mr. President, yes I am aware that there has been ongoing scientific studies in this area.

Mr. BINGAMAN. Mr. President, will the chairman agree that as section 310 undergoes conference with the House and the language is considered that it is consistent with the ongoing study by the National Academy?

Mr. DOMENICI. Yes, I believe the provision has been developed based

upon sound science and will be glad to compare the National Academy report with section 310.

Mr. BINGAMAN. Mr. President, I thank the chairman for taking the time to discuss this matter with me.

Mr. JEFFORDS. Mr. President, I have agreed not to offer my amendment which would have required the submission to the Committee on Environment and Public Works of a log of documents relating to New Source Review at the Department of Energy by a time certain. My agreement is based on a promise from the Department made to my staff today. The Department has committed that this log will be delivered to me and the committee within the next few days. I ask unanimous consent that a September 25, 2002, letter from the Department to me, as then chairman of the committee, be printed in the RECORD following my remarks. This letter promised delivery of the document log by October 24, 2002, yet the Department failed to provide that log.

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

DEPARTMENT OF ENERGY,
Washington, DC, September 25, 2002.

Hon. JAMES M. JEFFORDS,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter is in further response to your December 19, 2001, letter to Secretary Abraham requesting certain documents in the possession of the Department of Energy (DOE) and related to Environmental Protection Agency's (EPA) review of its New Source Review (NSR) program. This supplements our earlier acknowledgment of your request on March 1, 2002, as well as a letter earlier today that transmitted certain documents that are arguably responsive to your request.

Based on conversations with Committee staff following our letter from earlier this afternoon, we understand that the Committee staff is interested in what additional responsive documents DOE has located and what our intentions are with respect to those documents. Other than Congressional testimony and the like, which we understand not to be covered by the Committee's request, the additional arguably responsive documents DOE has located consist of internal Administration communications regarding the ongoing development of proposed and final rules.

We understand that EPA has previously indicated to you its concerns providing internal executive branch deliberative communications of this nature but has also indicated that it wants to continue to work with the Committee on a cooperative basis. We further understand that you have reached agreement with EPA regarding how these interests may be accommodated. We share EPA's wish to work out a reasonable accommodation of these interests, and stand ready to provide you these materials on the same basis as that set out in EPA's letter to you of today.

Specifically, on or before October 24, 2002, we will provide the Committee the 1996 NSR rulemaking documents responsive to Items I through V of your December 19, 2002 request. With respect to documents responsive to Items II and IV of your request, we will continue discussions with the Committee to reach a mutually acceptable accommodation for the delivery and protection of information that is attorney work product or otherwise protected by law. With respect to documents responsive to your request that related to the upcoming proposed rule, we agree to continue to discuss our respective positions on Congressional access to those documents. In the meantime, and not later than October 24, 2002, we will produce a log of documents responsive to your request that relate to the upcoming rules on new source review. Finally, with respect to any responsive documents we locate that are not addressed above, including responsive documents related to the NSR ''90 day review,'' we will provide these to the Committee by October 24, 2002, on the same basis as EPA.

If you have any questions regarding this matter, please call me or have a member of your staff call me.

Sincerely,

DAN R. BROUILLETTE,
Assistant Secretary for Congressional and Intergovernmental Affairs.

Mr. NICKLES. Mr. President, I rise in support of H.R. 2754, the fiscal year 2004 Energy and Water Appropriations bill, as reported by the Senate Committee on Appropriations.

I commend the distinguished chairman and the ranking member for bringing the Senate a carefully crafted spending bill within the subcommittee's 302(b) allocation and consistent with the discretionary spending cap for 2004.

The pending bill provides $27.3 billion in discretionary budget authority and $27.3 billion in discretionary outlays in fiscal year 2004 for the Department of Energy, the Bureau of Reclamation, and the Corps of Engineers.

The bill is $1 million below the subcommittee's 302(b) allocation for budget authority and $47 million in outlays below the 302(b) allocation. The bill provides $511 million more in budget authority and $483 million more in outlays than the President's budget request, and $1.2 billion in budget authority and $1.8 billion in outlays more than the 2003 enacted level.

I am concerned that there may be an amendment to add $125 million in emergency funding for the Corps of Engineers. This amendment, if offered, will have a Budget Act violation and I will not be able to support it.

I ask unanimous consent that a table displaying the Budget Committee scoring of the bill be printed in the RECORD at the conclusion of my remarks. I urge the adoption of the bill as it was reported from committee.

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

S. 1424, ENERGY AND WATER APPROPRIATIONS, 2004: SPENDING COMPARISONS—SENATE-REPORTED BILL

[Fiscal year 2004, in millions of dollars]

	General purpose	Mandatory	Total
Senate-reported bill:			
Budget authority	27,312	.....	27,312
Outlays	27,312	.....	27,312
Senate Committee allocation:			
Budget authority	27,313	.....	27,313
Outlays	27,359	.....	27,359
2003 level:			
Budget authority	26,156	.....	26,156
Outlays	25,555	.....	25,555
President's request:			
Budget authority	26,801	.....	26,801
Outlays	26,829	.....	26,829
House-passed bill:			
Budget authority	27,080	.....	27,080
Outlays	27,173	.....	27,173

SENATE-REPORTED BILL COMPARED TO—

Senate 302(b) allocation:			
Budget authority	(1)	.....	(1)
Outlays	(47)	.....	(47)
2003 level:			
Budget authority	1,156	.....	1,156
Outlays	1,757	.....	1,757
President's request:			
Budget authority	511	.....	511
Outlays	483	.....	483
House-passed bill:			
Budget authority	232	.....	232
Outlays	139	.....	139

Note: Details may not add to totals due to rounding. Totals adjusted for consistency with scorekeeping conventions.

Prepared by SBC Majority Staff, July 21, 2003.

Mrs. MURRAY. Mr. President, I wish to address two parts of the Senate energy and water bill that are extremely important to Washington State: the environmental cleanup program, which impacts the Hanford Nuclear Reservation, and the Army Corps of Engineers.

First, let me express my deep appreciation to Chairman DOMENICI and Senator REID for their work on this bill. As always, they have taken limited resources and produced a well-balanced bill. That's a big challenge given the great needs our country faces in infrastructure, water, and energy. They have worked hard to understand the needs of my State and every State, and I thank them. I also thank the subcommittee staff. Clay, who is now at the White House, Drew, Tammy, Roger and Nancy do a remarkable job dealing with the thousands of requests from Members, and I thank them as well.

I want to begin by talking about the environmental cleanup program at the Department of Energy. That program is charged with cleaning up nuclear sites across the country, including the Hanford Nuclear Reservation in Washington State. For many years, I have had to fight the efforts of this and other administrations to under-fund this critical responsibility.

This year, I am pleased that we don't have to fight for increased funding. I think that success is due to several factors. First, we have a bipartisan group of Senators who are committed to cleaning up sites in their States, and our group has pushed hard for this increased funding. In addition, we are fortunate to have the subcommittee chairman and Senator REID as allies in this effort. The Department of Energy also deserves credit for putting forward a good budget request that puts these funding issues behind us this year.

But despite the agreement on funding levels, there is another problem that is brewing which I believe threatens the effective cleanup of these sites.

Like the people of the Tri-Cities, WA, I want to make sure that dangerous waste is cleaned up. I am concerned that this administration may try to change the ground rules so it could declare victory and walk away from the

site, without doing all the clean up work that's required. That could happen if the administration changes the definition of high-level nuclear waste.

To prevent that type of game-playing, the Natural Resources Defense Council, NRDC, brought a lawsuit against the Department of Energy. That suit sought to block new DOE rules on the reclassification of nuclear waste. Before that case went to trial, the NRDC and the States offered to settle the issues. Unfortunately, the Department of Justice and the Department of Energy rejected that cooperative approach.

The case went to court, and the Department of Energy lost. One would expect the DOE to go back to the plaintiff and the states to settle the issues, but that's not what happened. Instead the DOE came running to Congress, asking for legislation to do what it could not do in court.

Unfortunately, this tactic of fighting the states and trying to do an ''end run'' around the other partners in the cleanup is not new for this administration. The truth is that the fastest, most effective way to clean up these sites is for the DOE to work in partnership with the States and Federal regulators. Time and time again, however, this administration has tried to go it alone to the detriment of the residents who live near these contaminated sites.

To make the best use of the funding provided in this bill, the Department of Energy needs to get back to working in partnership with the States and Federal regulators. A unilateral approach will simply cost more money and will only create further delays. I understand the Department and contractors want to get on with their work, but they must recognize that State and Federal regulators also have a job to do. And most importantly, the people who live near these sites deserve to know, understand, and have input on the activities taking place near their homes.

In a letter to Speaker HASTERT, the Department claims the loss in court will greatly impede the cleanup of waste in Idaho, South Carolina, and Washington State. That simply is not true, according to the NRDC, the attorneys general of those three States, and the environmental directors of each State. I strongly urge my colleagues to reject the Department's request for a change in law.

I also strongly urge the Department of Energy to get back to its job of cleaning up the waste, rather than wasting valuable time seeking help from Congress over a court case that it lost.

I would also like to applaud the report language in the Senate bill that directs the Office of Management and Budget to review the Department of Energy's cleanup agreements, contracting, and cost estimates. I believe we should press the Department and contractors to cleanup these sites faster and more cheaply. Everyone supports this goal. However, we should not reduce the cleanup standards or threaten the safety of workers and surrounding communities. We must examine agreements and contracts to make sure they are realistic and that they don't rely on regulatory agreements and technologies that do not exist today. I do not want to stand here in two, three or ten years and have to explain that the reason some agreement or contract did not meet success was because it was never achievable in the first place.

Let me close this topic by making clear that we are making progress on cleanup around the country. This is a very challenging program that deals with the most dangerous materials in the world. That often requires new solutions and technologies, but our scientists, engineers, and workers have risen to the occasion. At Hanford, we are nearly done removing the spent fuel from the K-basins. This work is likely to be complete before the required timeline. Early success is also being achieved on the cocooning of reactors and cleanup of the plutonium finishing plant.

In short, we are starting to make real and substantive progress in this effort. In this bill, we are providing the necessary funding. Now, we need the Department of Energy to take this money and work hand-in-hand with regulators and communities to make the cleanup a success.

The second issue I would like to address is the budget for the Army Corps of Engineers.

As Chairman DOMENICI and Senator REID often say, we face the challenge of an inadequate budget for the Corps with every administration. In that simple sense, this year is nothing new. However, I think we are facing a compounding crisis this year when you consider: the scale of this year's cutback of the Corps' budget, the cumulative effect of years of inadequate funding, and the President's failure to fund low-use/shallow draft ports.

First, the President's budget for the Corps is $445 million less than our current fiscal year budget. I commend the chairman and Senator REID for restoring $233 million of this funding. In the end, however, it creates a downward trend at a time when we cannot afford to ignore our infrastructure. This funding shortfall means we are not keeping up on our time-lines to construct projects that are already underway. It also means we are not moving ahead on new projects that are critical for expanding our infrastructure capability and expanding our ability to export American products.

Even more troubling is the growing backlog in our operation and maintenance funding. Our infrastructure is falling apart around us—threatening our economy, and in some cases the lives of our sailors and boaters.

In Washington and Oregon, we have many examples of Corps infrastructure that is falling apart. John Day Lock and Dam has a crack running the entire length of one monolith. That threatens the entire operation of the lock. This will require more than $8 million, which is twice what is included in the President's budget. I thank the Subcommittee for providing an increase for the John Day Lock in the Senate bill.

Here's another example. Thousands of feet of the north and south jetties at the Mouth of the Columbia River have been lost to storms. The loss of these jetties creates greater dredging issues and threatens the safety of ships and boats that are navigating one of the most treacherous bars in the country.

If left unchanged, the amount of funding provided in the budget for Bonneville Lock and Dam would result in a $4 million penalty against the United States. Again, thankfully, the Senate subcommittee increased funding and will avoid that penalty.

These are just a few of the threats facing our existing, major water infrastructure. Clearly, the budget for the Corps is grossly inadequate.

We also need to remember that the budget does not provide sufficient funds for low-use and shallow draft ports. In fact, in some cases there is no funding to meet these needs. The President's budget seems to take pride in under-funding or zeroing out funds for these ports and channels. There is an apparent belief in the administration that because of the low volume use of these harbors it would constitute an unwise use of Federal funds to keep them open. This narrow view of the situation abandons some of our most economically-challenged rural communities in Washington, in Oregon, and across the country.

Look at the port of Chinook in Washington State where a failure to perform maintenance dredging on the Chinook channel has nearly closed the Port. It was only because the subcommittee intervened and the Corps responded quickly that the port will not be closed this fall and winter to fishing fleets. I express my sincere appreciation to the work of this subcommittee for protecting the jobs relying on this port.

When the port of Chinook is properly maintained, the annualized cost of dredging the channel is about $400,000. That small investment produces major economic benefits. The commercial and recreational use of the Port's marina alone bring in more than $3 million. Add to that number the value of the Buoy Crab Company, which employs 40 year-round workers and 100 seasonal employees. It's the second largest crab processor in Washington State. And we cannot forget that the port is located in a rural county that is facing some of the highest unemployment rates in the State.

Near Chinook is the port of Ilwaco, which generates almost $9 million in commercial seafood sales. Charter boat fishing generates an additional $2.8 million. Again, a consistent dredging program can maintain an economy

that brings millions of dollars into a rural economy and keeps our people employed.

In Oregon, they have 7 or more low-use, shallow draft ports. All of them are located in rural, coastal communities, and none of them received funding in the President's budget. The only bright note once again is that the subcommittee has chosen to fund these ports and to protect the jobs they support.

It appears that there are more than 25 ports and channels that receive funding not included in the President's budget. These are ports and channels that will remain open only because this subcommittee decided to value jobs and economies in rural America.

We must find a way to get this administration and future administrations to provide adequate budgets for the Corps. We cannot continue to underfund our existing infrastructure and fail to invest in building our economies.

I thank Chairman DOMENICI and Senator REID for their support of water infrastructure and for their efforts on this bill.

Mr. BYRD. Mr. President, I have often spoken of the grandeur of West Virginia's mountains and the abundance of tranquil mountain streams that gurgle quietly throughout the State. However, these same majestic mountains and streams are also conduits for disaster and devastation. When the heavy rains hit, waters from the mountaintops surge to the valleys and turn once peaceful meandering mountain streams into angry, raging, muddy torrents of horror, rising up over their banks and destroying anything in the way.

In West Virginia, such torrential flooding seems to be an annual event—since 1993, the State has had eleven federally declared disasters. In this year alone, the State has had two federally declared disasters. In the latest round of devastating flooding in the state earlier this summer, twenty counties were declared Federal disaster areas. Homes were damaged or destroyed, and the severe impact on the infrastructure in the southern part of the State—from roads, bridges, water and sewer, to power sources—brought a normal way of life to a screeching halt once again.

I know that West Virginia is not alone in attempting to recoup from such disasters. This year, many States have been impacted by floods, tornados, ice storms, and other severe conditions of nature that have crippled individuals and communities alike. That is why I am co-sponsoring an amendment with Senator REID in the amount of $65 million that would provide funding assistance through the Army Corps of Engineers to aid impacted States in recovering and rebuilding from recent natural disasters. This funding, coupled with the $983 million Federal Emergency Management Agency recently received through the FY 2003 Supplemental, should go a long way in helping States get back on their feet.

This amendment provides $65 million for the Corps under the operations and maintenance account to help repair damages to public facilities, such as obstructive deposits in flood control streams, bank erosion threatening public facilities, damages to other public infrastructure such as water and sewer facilities. Additionally, funds provided will allow the Army Corps to repair weather related damages that have occurred to Federal infrastructure.

Weather-related damages have occurred to public infrastructure across the country that is beyond the ability of local governments to repair. As I mentioned, West Virginia has recently suffered devastating floods. Numerous other States such as Michigan, Louisiana, Missouri and Illinois are still suffering from damages that occurred in previous storm events. In May of this year, unusually heavy rainfall occurred in four counties of the Upper Peninsula of Michigan causing rivers and streams throughout the area to swell out of their banks, inflicting severe and widespread damages. The greatest damages occurred in Marquette County where an earthen dike at Silver Lake Basin failed, sending an estimated eight billion gallons of water cascading downstream through the city of Marquette toward Lake Superior. The floodwaters destroyed or damaged numerous public and private structures and caused unprecedented environmental and ecological damage within the Dead River Basin and into Lake Superior in Marquette County. Two power generation facilities were damaged. One of the power generation facilities, the Presque Isle plant in the city of Marquette, resulted in shutdown for more than 30 days. Without power, two iron ore mines, which produce about 20 percent of our nation's annual iron ore output, were shut down, idling 1,200 workers. Dozens of other area businesses, institutions and private homeowners were also seriously impacted. Three of the four counties affected are impoverished, with a majority of the population over 65 years of age. Local governments simply do not have the capital to pay for the public damages. Without an infusion of Federal aid, Marquette and the other three counties will have a difficult, if not impossible, task of recovering from this disaster.

This amendment fills a significant funding void to provide States expedited recovery from natural disasters that have occurred throughout the United States. These funds are vitally needed, as any flood, tornado, or storm victim can tell you, and I urge the Senate to approve their inclusion in this bill.

I thank my colleagues for their consideration of this important amendment.

Mr. JEFFORDS. Mr. President, I rise to express my concern regarding section 205 of H.R. 2754, the fiscal year 2004 energy and water appropriations legislation. The provision affects the protection of the Rio Grande silvery minnow. As ranking member of the Senate Environment and Public Works Committee, the committee of jurisdiction over the Endangered Species Act, I am concerned about the impact this provision will have on the future survival of this species.

In New Mexico, Federal, State and environmental stakeholders were in the midst of negotiations that would yield long-term solutions to the water crisis in the Rio Grande. These negotiations began in response to a 10th Circuit Court of Appeals ruling that both San Juan-Charm water and native Rio Grande water could be taken by Federal officials to meet environmental conditions for the silvery minnow. The discussions were recently suspended due to the time pressures placed on the parties by the provision in this bill.

The parties, convened by Governor Richardson, are seeking locally driven resolutions that would both fulfill the intent behind this provision and also address the conditions that precipitated the need for the court's opinion.

These negotiations have moved very close to agreement on the sustainable and equitable management of water resources in the Middle Rio Grande. The negotiations were a great step toward collaboration and made progress under the Governor's leadership. That they have been called off, due largely to this provision, puts at risk a precedent for collaboration that could be a model for endangered species and river management throughout the West.

I am concerned that section 205 would prevent the Bureau of Reclamation from releasing water from its reservoirs to maintain silvery minnow habitat and that without access to this water, it will be more difficult to acquire the water needed to meet the target flows in the U.S. Fish and Wildlife Service biological opinion endorsed in this provision. Any action that takes water out of the Bureau's hands increases the pressure on remaining water supplies and on the silvery minnow. Negotiated water management reforms, not exemptions to the Endangered Species Act, will best meet the needs of all who are dependent on the Rio Grande.

This rider also would seek to sanction a biological opinion from the Fish and Wildlife Service. The Endangered Species Act is a flexible tool that allows for biological opinions to adapt to changing circumstances and increased knowledge. If this biological opinion is endorsed by this provision, it is likely that it would not be reopened, even if the Service learns of more effective methods for protecting the silvery minnow.

The Rio Grande silvery minnow occurs only in the middle Rio Grande. This species was historically one of the most abundant and widespread fishes in the Rio Grande basin, occurring

from New Mexico, to the Gulf of Mexico. It was also found in the Pecos River, a major tributary of the Rio Grande, from Santa Rosa, NM, downstream to its confluence with the Rio Grande in south Texas. It is now completely extinct in the Pecos River and its numbers have severely declined within the Rio Grande. Currently, the species occupies only about five percent of its known historic range.

The parties to the mediation, the Governor's office; environmental groups; the conservancy district; the Bureau of Reclamation; several Indian Pueblos; the State water engineer; and the city of Albuquerque should be able to continue their negotiations to find a mutually agreeable solution to this problem, without jeopardizing the underlying species protections provided by the Endangered Species Act.

Mr. LEVIN. In May of this year, unusually heavy rainfall occurred in four counties of the Upper Peninsula of my home State of Michigan—Baraga, Gogebic, Marquette and Ontonagon Counties—causing rivers and streams throughout the area to swell out of their banks, inflicting severe and widespread damages. These four counties are not able to absorb this disaster as they have overall unemployment and poverty rates higher than the state average.

The greatest damages occurred in Marquette County where an earthen dike at Silver Lake Basin failed, sending an estimated 8 billion gallons of water cascading downstream through central Marquette County and the city of Marquette toward Lake Superior. Rapidly moving water and massive amounts of trees, logs and other debris has severely undercut many sections of the riverbank, making them unstable and creating serious public safety and environmental concerns.

Damages to one of the power generation facilities, the Presque Isle plant in the city of Marquette, resulted in shutdown for more than 30 days. Without power, two iron ore mines, which produce about 20 percent of our Nation's annual iron ore output, were shut down, idling 1,200 workers. These mines contribute nearly $115 million in personal income annually and are two of the largest employers in Marquette County. Even this temporary shutdown has had a significant negative impact on the local, regional, State and national economies. Dozens of other area businesses, institutions and private homeowners were also seriously impacted.

Current estimates of economic damages alone to these counties, mostly to Marquette County, are calculated at over $100 million. There have been severe impacts to roads, bridges, culverts, water control structures, utility infrastructure and environmental and ecological damage to the waterways resulting from this flooding. When the public damage figures, currently estimated at $18–20 million, are combined with those high economic impacts caused by the loss of electrical power generation capabilities and the environmental degradation to the area, it paints a devastating picture for this area in Michigan. Further, this area is still recovering from the flooding that occurred last year. The fact that these counties have suffered two major disasters in two years is extremely significant.

Without our assistance, Marquette and the other three counties will have a difficult, if not impossible, task of recovering from this disaster. And the health, safety, economic vitality, and quality of life of the communities and their citizens will certainly suffer for years to come.

I urge my colleagues to support this request for $125 million in emergency funding for flood damage remediation assistance.

Mr. DOMENICI. Mr. President, I heretofore indicated there would be a vote on a McCain amendment preceding final passage. The Senator has sent word that he no longer desires to offer his amendment. He withdraws it. That means there are no amendments pending. We are ready to go to final passage.

I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

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

The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask unanimous consent that following the passage of the bill, the Senate insist on its amendment, request a conference with the House on the disagreeing votes, and the Chair be authorized to appoint conferees on the part of the Senate.

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

The bill having been read the third time, the question is, Shall the bill, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. ALLARD) is necessarily absent.

I further announce that the Senator from Oregon (Mr. SMITH) is absent because of a death in the family.

Mr. REID. I announce that the Senator from Louisiana (Mr. BREAUX), the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Georgia (Mr. MILLER) are necessarily absent.

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

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

The result was announced—yeas 92, nays 0, as follows:

[Rollcall Vote No. 350 Leg.]

YEAS—92

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

NOT VOTING—8

Allard	Graham (FL)	Miller
Breaux	Kerry	Smith
Edwards	Lieberman	

The bill (H.R. 2754), as amended, was passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENT NO. 1722

Mr. SANTORUM. I ask unanimous consent notwithstanding the passage of H.R. 2754, the energy and water appropriations bill, it be in order to consider the Bingaman amendment which is at the desk; that the amendment be considered and agreed to, and the motion to reconsider be laid upon the table without any intervening action or debate.

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

The amendment (No. 1722) was agreed to, as follows:

(Purpose: To improve administration of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA))

On page 51, line 13, insert before the period: '': *Provided*, That from the funds made available under this heading for transfer to the National Institute for Occupational Safety and Health for epidemiological research,

$7.5 million shall be transferred to include projects to conduct epidemiological research and carry out other activities to establish the scientific link between radiation exposure and the occurrence of chronic lymphocytic leukemia;''.

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendment, requests a conference with the House on the disagreeing votes of the two Houses and appoints the following as conferees on the part of the Senate.

The Presiding Officer (Mr. ALEXANDER) appointed Mr. DOMENICI, Mr. COCHRAN, Mr. MCCONNELL, Mr. BENNETT, Mr. BURNS, Mr. CRAIG, Mr. BOND, Mr. STEVENS, Mr. REID, Mr. BYRD, Mr. HOLLINGS, Mrs. MURRAY, Mr. DORGAN, Mrs. FEINSTEIN, and Mr. INOUYE conferees on the part of the Senate.

PARTIAL-BIRTH ABORTION BAN ACT OF 2003—Resumed

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I ask that the Chair lay before the House the message from the House accompanying S. 3, as under the previous agreement.

The legislative clerk read as follows:

A message from the House to accompany S. 3, a bill to prohibit the procedure commonly known as partial-birth abortion.

Mr. SANTORUM. Mr. President, we have before the Senate right now what is usually a procedural motion. When the House passes a bill and the Senate passes a bill and they are different, we procedurally just move to disagree with the House and their provision and go to conference, just as we did prior to the calling up of this bill, S. 3.

The Presiding Officer, who is sitting here for the Vice President, said we were appointing conferees.

The Senator from California has sought to have a debate about whether we are going to disagree with the House and therefore go to conference. I don't understand quite why this is necessary since it is purely a procedural motion. I have been in the Senate not that many years. I have been here about 9 years and have never had a debate on a motion to disagree with the House and to have this kind of time spent when everybody agrees that is what we need to do.

I will support the motion to disagree with the House so we can go to conference and come up with a bill on partial-birth abortion that will be in a conference report that will then come to the Senate that will not be amendable.

If we did not disagree with the House, and the bill came here to the floor, we would have the House bill here. It would be subject to amendments. We would go on again for a long time and have debates and discussions on other amendments. We would have to send it back to the House, and we would be going through this game again.

So this is just a way to bring finality to this process of trying to get a bill which has now been hanging out here in the Senate. We passed this several months go. The House did also. We have sort of been on hold here because of this procedural motion.

Now that we have agreed to allow 8 hours of debate—2 of which were last night—we will debate a couple hours tonight, and tomorrow morning we will have run a couple more hours, and then, hopefully, finish it sometime, maybe tomorrow evening. But the idea is to get this bill to conference where I am confident we will get a bill that will be to the liking of the vast majority of the Senate as well as the House and the President.

With that, we will have this bill signed and for the first time have a Federal piece of legislation to ban a procedure which the late Senator from New York, standing at that desk right over there, referred to as ''infanticide.''

It is a gruesome procedure which is very difficult to talk about because it is so gruesome and graphic, this description of what this procedure is all about.

It is used almost always on babies who would otherwise be born alive, who are post 20, 21 weeks in gestation, which is halfway through a pregnancy, or later.

These babies are, as I said before, in most cases, healthy. The mothers are healthy. This procedure is used because late in pregnancy a mother decides, for some reason, that she no longer wants the child within her—which is a tragic situation to have a child that is unwanted. I think we all recognize the tragedy of that.

But I think what most Members of the Senate have said is that this procedure—not that she shouldn't have the right to do it. Roe v. Wade, as interpreted by many subsequent Supreme Court cases, gives a woman the absolute right to an abortion at any time during pregnancy.

Now, for those of you who have not listened to debates on abortion before in the Senate or who have not read the case law with respect to abortion, that may come as a surprise to you, that Roe v. Wade, and its subsequent line of cases, has developed to the point where there is no restriction—no restriction—on the right to an abortion up until the moment the baby separates from the mother completely. Up until that time, the Supreme Court now has decided that a woman has a right to kill the child within her. Or even, as in the case of partial-birth abortion, the Supreme Court ruled that the woman has a right to kill the child who is but an inch, 2, or 3 inches completely from being separated from the mother in the process of being delivered. That is how extreme the Roe v. Wade decision is.

Now, I would say that for most Americans who are listening, that is further than they had thought Roe v. Wade had taken this country, and that it is not where the vast majority of Americans are. That is why 70 percent of the people in this country oppose partial-birth abortion and would like to see it banned. That is why the vast majority of people in this country are for some limitation on abortion.

Depending on the poll you see, anywhere from 15 to 23 percent of the American public want abortions available at any time during pregnancy. Most Americans—the overwhelming majority of Americans—want some restrictions.

Now, in the Senate we did something I would argue was unfortunate. A couple months ago we adopted an amendment offered by the Senator from Iowa which was truly an extreme amendment.

We hear so much talk about people who are pro-life, who are against abortion, as being extremists. The definition of ''extreme'' is someone who is outside the norm. Well, when you have 15, 16, 17 percent holding this position, and 85 percent holding the other position, it is very difficult for the 16 percent to say the 85 percent is extreme.

But that is what we hear on the floor of the Senate, that those who believe in the absolute right given under Roe v. Wade—the absolute right—to have an abortion at any point in time in a pregnancy, for any reason—because you don't like the color of your child's eyes or because your child may have a cleft palate or because something happened in your personal life that has upset you and you no longer wish to carry this child, even though you may be 37 or 38 weeks along—it doesn't matter.

Under Roe v. Wade, and under the amendment offered by the Senator from Iowa, we have said in the Senate—I believe wrongly and unjustly—that should be the law of the land, that a woman's right, domain over a child, is absolute until complete separation. There are some who even argued after separation. But, thankfully, the Senate voted last year that a child who was born and completely separated has a constitutional right. That is how far we have come. We actually passed a bill last year which said that once a child is born it has constitutional protection. That is the biggest step we have been able to take to protect the life of innocent children in America.

But what this Roe v. Wade language—this language which I anticipate being dropped in conference—says is that we believe in the absolute right—absolute right—of a woman to terminate a pregnancy, to kill the child within her, at any point in time, for any reason. That is what the law of the land says.

Now, I would make the argument that Roe v. Wade, because of this twisting of the Constitution—it really is tortuous—has done something that we have not seen done in this country, that we have not seen done in this country since the Dred Scott decision.

If we think back to the Dred Scott decision—well over 100 years ago, 150 years ago—the Dred Scott decision was based on a misunderstanding of ordered

liberty, of ordered rights that we laid out in our founding documents. In the Declaration of Independence, the document on which this country was founded, we made a statement as a country that we hold dear. The Declaration of Independence—of maybe all the documents, of all the great works of craftsmanship of words that we have seen put forth in this country—there are very few that match the eloquence of the Declaration of Independence.

What the Declaration of Independence said is: We hold these truths to be self-evident, that all men are created equal and endowed by our Creator with certain inalienable rights. And then what—this is very important.

The Presiding Officer is a great student of history and maybe the greatest advocate for the understanding of history and the knowledge of who we are as Americans. I would argue the Declaration of Independence tells us more about who we are as Americans than maybe any other single document. But what this document says is: We are endowed by—not a Congress or not the courts or not some king—our Creator, the God that you worship, Allah, Jesus, God of Abraham, Isaac and Jacob, a God who may be a God of the Hindu religion, whatever that creator is, the creator God, he has given us rights by the fact that we are human.

What these rights consist of the Constitution laid out. They laid them out very particularly because there is an order to the rights that God has given us. There has to be. We have the right to life, liberty, and the pursuit of happiness. They didn't say the pursuit of happiness, liberty, life. They didn't say liberty, life, happiness. They said them in a specific order because without that ordering of liberty, without that ordering of rights, they make no sense. For you cannot have happiness, true happiness, you cannot pursue true happiness, which the Founders really sought as truth—the ability to find what is true and what is right and what is just, and that would in a sense make you happy—you cannot pursue happiness without the freedom to do so, without the liberty, the right of liberty to think and to pursue your beliefs freely.

But you cannot have liberty, obviously, if you are not alive. If you don't have life, then what good is liberty? And if you are not alive, if you have no right to your own life, you can't pursue happiness. So life, liberty, and the pursuit of happiness are not just words that were thrown out there because they sounded lofty or because they were rolled off the tongue in a way that makes a nice impression. They are there because they are foundational in understanding how free people treat each other, how a free society must conduct itself in order for it to prosper.

What did Dred Scott do? The Dred Scott decision put the liberty rights of the slaveholder over the life rights of the slave. It said that I, as a slaveholder, could own and control you, could kill you, could sell you as a piece of property—liberty rights over life rights. The U.S. Supreme Court in the 1850s said that was constitutional. As a result, many people believed that, because it was constitutional, it was therefore right. It was legal. It was just. It was moral. Why? Because our laws are a reflection of a collective morality. Our laws are a reflection of what we as a society believe is right.

At first there were a few. As Henry the Fifth in Shakespeare said: We few, we band of brothers. In this country there were few who stood and said: No. It may be legal, it may be seen as just by the courts, but it is wrong. It is immoral; it is unjust; and it is a fundamental misunderstanding of the basis upon which this country was founded.

As Abraham Lincoln said, a house divided against itself cannot stand. The separation began to grow. And more and more people began to understand the injustice of taking the liberty rights of one to trump the life rights of another. There were many in this country and many in this very Chamber who believed we could sustain that, as unjust as maybe they even thought it was.

Many would have said: Well, I am personally opposed to slavery. I would never own a slave. I would never do something like that. But who am I to tell someone else they can't own a slave? Is that my responsibility? I may think it is immoral, but how can I impose my morality on a slaveholder who has his own economic interests? He has a family to raise. He has complications in getting his crops in.

There are exigencies out there that those who promoted slaveholding said: We need this. We don't like it.

I am sure there were many people on both sides of the aisle who said: We support slavery. We don't like it. We don't encourage it. Yes, we think it is probably immoral. But we need to have this option available for people if that is what they choose. We need to give people the right to choose.

Eventually there were enough people in this country who decided they could not let that stand. Unfortunately, we had to fight a war to change it.

After that war, I am sure there were many in this Chamber who thought this great scourge, this black mark, this pox upon the American existence had been wiped away, never to be seen again; that we would learn from history never to repeat this horrendous injustice, this immoral behavior as a society. We would never, ever again misorder our liberties. But they were wrong. For today in this country, as a result of Dred Scott 2, the Roe v. Wade decision, we have seen the same thing come about.

We now have the life rights, the most important right given to us as children of the Creator, crushed and hidden away behind the concept of liberty. It repulses us now to think that people used liberty to defend slavery. They used the right of free people to live their life freely to defend slavery.

I hope that 100 years from now—hopefully soon—people will be on the floor looking back at this time and saying: I can't believe they did it again. I can't believe they didn't learn their lesson. I can't believe they didn't see that a House divided against itself cannot stand.

The Senator from Tennessee, the Presiding Officer, is honest. It has been said many times that those who do not learn from history are doomed to repeat the mistakes of history. And so we are, and so we will continue, I suspect. But it is important that the few, we merry band of brothers, stand up, in spite of what may be majorities against us—and certainly the media and the popular culture is speaking against us—and speak the truth that our Founders laid out.

They did not say we believe or we think we were endowed by our Creator. They did not say it is our opinion that these rights exist. They claimed truth. They claimed truth, and they devoted their lives, their fortunes, and their sacred honor to fight for that truth during the Revolutionary War.

People who came from little hamlets all over the north and the border States did the same. Today, in their own quiet way, millions of Americans do the same. They fight the battle. They fight it with prayer chains. They fight it at home at night and through their prayers, through the counsel of those who are going through troubled times. They do it through the love they feel toward those who are going through difficult times in their lives, but they understand that the truth claim that our Founders chiseled into the Declaration of Independence will not be forgotten in our society.

We will lose many more battles. There is no doubt we will lose many more battles, but ultimately, I have to believe, because I do believe in America, we will win the war and reestablish truth, justice, and righteousness—righteousness as defined by our Founders, as understood in the nature of humans. We will win that war one day.

I yield the floor. 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. SANTORUM. 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. SANTORUM. Mr. President, I ask unanimous consent that the time be taken equally off both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. 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. HARKIN. Mr. President, I wish to take a few minutes to join with my colleague from California and talk about this important measure pending before the Senate.

First, I applaud the Senator from California, Mrs. BOXER, for insisting on a vote on this motion to disagree with the House. She has been a long-time leader in the Senate and the House in protecting a woman's constitutional right to privacy and her right to choose.

The motion before us is a motion to disagree with the House version of the late-term abortion bill. What is the reason we would want to disagree with the House bill? The House bill is exactly the same as the Senate bill except for one key difference: It failed to include the resolution which I offered on the Senate floor, adopted in the Senate regarding the Supreme Court decision on Roe v. Wade.

This is the exact language that is in the Senate bill that the House disagrees with:

It is the sense of the Senate that—

(1) the decision of the Supreme Court in Roe v. Wade 410 USC113(1973) was appropriate and secures an important right;

and (2) such decisions should not be overturned.

That is all it says. That is what the Senate adopted. That was my amendment that I offered to the bill, and the Senate adopted it. This is what the Senator from Pennsylvania said was extreme. It is just a sense-of-the-Senate that Roe v. Wade was appropriate and secures an important right and should not be overturned. The Senator from Pennsylvania says that is extreme.

The Senator from Pennsylvania may think that. From listening just a little bit to him—and I have heard him talk at length on this issue on the Senate floor in the past—I am sure the Senator from Pennsylvania believes Roe v. Wade was an extreme decision. It is his right to think that. I do not say he cannot think that if he wants to, but that is not what the majority of people in this country believe. It certainly is not the way the vast majority of women in our society feel.

Again, this passed the Senate 52 to 47. It passed the Senate before in the same version. About 4 or 5 years ago, we passed the same thing, a sense of the Senate that Roe v. Wade should not be overturned. So, again, the only difference between the House and the Senate bills is simply this: The House does not have this language in it, so, again, to go to conference with the House we have a vote to disagree with what the House did.

If we agreed with what the House did, we would have no need for the conference. We would send the bill to the President. For example, if the House had included this language in their bill, we would not be here tonight talking about this. It would already have gone to the President and he would have signed it into law. So that is what we are talking about. We are going to have a record vote on a motion to disagree with the House version. It is my belief that if one votes to disagree with the House version, then they are disagreeing with the fact that they did not put this language in their bill. That is the only difference.

Therefore, if my colleagues vote to disagree with the House, then they are voting to agree with the Senate. If they vote to agree with the Senate, they agree that this language should stay.

The Senator from Pennsylvania may try to explain it one way or another, a procedural vote, blah, blah, blah—all that kind of stuff—but the truth is, if my colleagues vote to disagree, the only thing on which they disagree is this language supporting Roe v. Wade. That is why I think it is important to have this vote.

The Senator from Pennsylvania says he is going to vote to disagree with the House, and then try to explain it some way. I mean, a vote is a vote. One can try to explain it any way they want, but the fact is this is the only difference.

I believe most people in this country believe that Roe v. Wade is a mainstream, moderate decision by the Supreme Court. It is one that American women have come to rely on, and I believe we owe it to them to insist that it remains in this bill.

The Senator from Pennsylvania has already said they will drop it in conference. Well, that is kind of interesting, is it not? The Senator from Pennsylvania has already preordained that no matter what we vote on in the Senate, they are going to drop it in conference.

I think every woman in America ought to know this. Every woman in America ought to know that the Republican leadership—and the Senator from Pennsylvania is in the Republican leadership—has said: We do not care what the Senate said, we are going to drop this language.

Can there be any doubt in any American woman's mind that their right to privacy, their right to choose, hangs by a thin thread?

The vote in the Senate was 52 to 47. Someone was missing. But a few votes here, a few votes there in the coming election, and I can guarantee that the right to choose for every young woman in America will be taken away. This Congress and this President will see to it that Roe v. Wade is overturned. They will see to it.

Every woman ought to know that whether they think abortion may be right or not, that is not the point. The point is whether a woman should have control over her own reproductive system or should some man have control over it? Or should a Supreme Court have control over it? Or should a legislative body such as a Senate or a House—comprised mostly of men, I might say—tell a woman what her reproductive rights are?

I have often wondered, if we could have randomly picked a Senate of 100 women or randomly picked a House of 435 women—I am sure there would be some women who would probably vote to do away with Roe v. Wade—but I would wager that the vast majority of any vote held in a Chamber of 100 women would be overwhelmingly: Keep your hands and keep your laws off my body. Keep your hands and your laws away from my right of privacy and my right to choose.

Does anybody have any doubt that a Senate of 100 women or a House of 435 women would vote differently than that? We would only be fooling ourselves if we thought they would vote the same as the men in the Senate and the men in the House. And I say pick them randomly.

On January 22, 1973, the U.S. Supreme Court announced its decision in Roe v. Wade. Again, for the record, it was a challenge to a Texas statute that made it a crime to perform an abortion unless a woman's life was at stake. That is what some in this Chamber want us to go back to.

Siding with Jane Roe, the Court struck down the Texas law. In its ruling, the Court recognized for the first time that a constitutional right to privacy is ''broad enough to encompass a woman's decision whether or not to terminate a pregnancy.''

It also set some rules. The Court recognized that the right to privacy is not absolute and that a State has a valid interest in safeguarding maternal health, maintaining medical standards, and protecting potential life.

A State's interest in potential life is not compelling until viability, the point in pregnancy at which there is a reasonable possibility for the sustained survival of the fetus outside the womb. A State may, but is not required to, prohibit abortion after viability. Let me repeat that. A State may—it is not required—prohibit abortion after viability, except when it is necessary to protect a woman's life or health, and that is the difference.

This is what the Supreme Court said:

The stage subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe—

Prohibit—

abortion except where it is necessary in appropriate medical judgment—

Interesting, the Court said medical judgment; they did not say legislative judgment—

for the preservation of the life or health of the mother.

Very important words.

Some people, when they get all ''rhetoricked'' about this issue, say that a woman can choose at any point, even up to minutes before the child is born, to terminate her pregnancy. That is not what the Supreme Court said. The Supreme Court said the State may even proscribe—prohibit—after viability ''except where it is necessary, in appropriate medical judgment, for the

preservation of the life or the health of the mother.''

So we see what the Senator from Pennsylvania and those who want to do away with Roe v. Wade are saying. They are saying: Look, we do not trust medical judgment, we do not trust a woman, and we do not believe that the health of the mother should be in here. ''Life,'' maybe, but not ''health of the mother.'' That is the difference. That is the key. Again, is that really extreme?

Oh, I hear the arguments. They say, ''Health of the mother? Why, the woman can say anything. Why, a woman can say, 'I may break out in a hot sweat if I don't end this pregnancy. Maybe my big toe hurts; therefore, I have to have an abortion.'''

Again, what this gets back to is a mistrust of women, that somehow a woman cannot make that decision as to how it affects her health; that somehow a man, a legislator, a legislative body, has to then intervene because, you see, you can't trust women to make that decision.

I trust women to make that decision. I have never in all my years ever talked to a woman who has had an abortion who took it lightly, willy-nilly, just a little procedure and move on. This is one of the most profound, traumatic, life-changing decisions a woman will ever have to make. It is not made lightly. It is made under great anguish, with great thought and contemplation.

So I guess when it comes down to that, I say I put my trust in women to make that decision. Not me. It is not going to happen to me. I will trust the woman, with her husband, her family, her doctor, her priest, rabbi, minister—whatever religious faith she may be—but ultimately it is up to the woman to make that decision.

That is what this is all about, isn't it? When you cut down through all of it, get rid of all the rhetoric, it gets down to whether women can be trusted to make these decisions. That is what my resolution said. It said Roe v. Wade was an appropriate decision and should not be overturned.

Before the 1973 landmark ruling of Roe v. Wade, it was estimated that each year about 1.2 million women resorted to illegal abortion, despite the known hazards of frightening trips to dangerous locations in strange parts of the city, of whiskey used as an anesthetic, of ''doctors'' who were often marginal or unlicensed practitioners, sometimes alcoholic, sometimes sexually abusive, under unsanitary conditions, with incompetent treatment. Many times there were infections, hemorrhages, disfigurement, and death.

By invalidating the laws that forced women to resort to back-alley abortions, Roe was directly responsible for saving women's lives. It is estimated at least 5,000 women died yearly from illegal abortions before Roe v Wade.

Who were these women? They were not the well-to-do. We all know from our youth that the well-to-do, the people who were well situated, had access. They always had a friend, they had a doctor who would perform it and not say anything. They would pay him and that would be the end of it. To say otherwise, to say that never happened, stretches credulity. We know that. And we all know cases of it happening.

No, it was not the well-to-do. They had their own special doctors who could keep things quiet. It was poor women, women without connections, women who lived in small towns in rural Tennessee and rural Iowa who didn't have that kind of access, poor women who lived in cities and urban areas who resorted to these back-alley abortions because they didn't have the ''connections.''

Sometimes I feel there are many who want to overturn Roe v. Wade because, you know, deep down inside they know if it ever came to them or their families and they were confronted with a situation where their loved one—a wife, a spouse, a mother, a daughter, a sister—for health reasons had to terminate a pregnancy, for health reasons wanted to terminate a pregnancy, they could get it done because they have connections. Don't you see? We all kind of have these kinds of connections, if you are well connected like a Senator or a Congressman, people with financial resources.

We can do away with Roe v. Wade, but if it ever happened to my sister, my daughter, and it was health, and I knew it was going to affect her health for the rest of her life—well, we would find somebody to take care of it, don't you know.

Again, it is back to poor women. Unfortunately, what is lost in this rhetoric is the real significance of the Roe decisions. Here is what the Supreme Court said, again, just 3 years ago in Stenberg v. Carhart. This was the Nebraska law. Nebraska had passed a law banning abortions except to save the life of the mother.

Here is what the Supreme Court said 3 years ago. The governing standard requires an exception:

> . . . where it is necessary in appropriate medical judgment for the preservation of the life or health of the mother.

That is what the Court said 23 years prior to that in Roe v. Wade. That is exactly what it said. So the Supreme Court in 2000, in the Nebraska case, said here is the governing standard.

Then they said:

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

Once again the Supreme Court has said:

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

That is why this late-term abortion bill before us I am sure will go to the Supreme Court and it is going to strike it down. Why? Because there is no exception for the health of the mother: Zero, no exception.

The whole concept of late-term abortions obviously is not something anyone relishes. I do not. It is not something that conjures up pretty thoughts. But neither does conjuring up the thought of a woman for whom, in the judgment of medical experts, this is the safest procedure to protect her health, and the woman can't have this procedure done and may lose her ability to ever have a child again.

A few years ago I met from my neighboring State of Illinois a woman who came to Iowa to speak to me when this issue came on the floor. She went public. In other words, she came out in the public. She is happily married. She had this late-term abortion procedure, this D-and-X procedure it is called, performed because she had a serious health problem.

Whether or not it is true, the doctor told her this was the safest procedure for her; that if, in fact, she did not have this procedure, the other two procedures that were left—one of them being a hysterectomy, and I don't remember what the other one was—would obviously leave her incapable of every having children again. She told me what a painful decision this was for her to give up this fetus that she had carried for several months. She spoke to me in heart- wrenching detail about how painful this was for her. But they made that decision. She made that decision with her husband, with her religious counsel, and she had this late-term abortion procedure done by a qualified doctor in a hospital in sanitary conditions with good medical personnel around her. And her and her husband went on to have more children—beautiful children.

Who am I as a Senator to have gone to that woman and said: You can't do that. I don't care what your doctor says. It makes no difference. It makes no difference how your health is going to be affected. It makes no difference whether you can ever have a child again. You cannot have that procedure done.

That is what we are saying here, folks. That is what we are saying to this woman. We don't care what the doctor says. We don't care what the medical judgment is. We don't care how badly your health may be affected. You can't have that done.

As a Senator, I am going to tell a woman that? Some people around here may want to play God. Some people around here may want to play dictator and dictate to women what they can and cannot do. That is not my role. That is why the longer we look at Roe v. Wade, and the decision that was made by the Supreme Court—and when we read the Nebraska case—it becomes clearer and clearer that the Supreme Court made a very wise decision in 1973. They set up a trimester system. When they set up the viability, the State does not have an interest. But after viability, States may even prohibit an abortion except to save the life

or the health of the mother. The longer that we have to look at what has happened with Roe v. Wade the more clear it becomes to this Senator that that really was a very wise decision.

This decision is profoundly private. As I said, it is life altering. As the Court understood, without the right to make autonomous decisions about a pregnancy, a woman cannot participate freely and equally in society because Roe v. Wade not only establishes a woman's reproductive freedom, it was also central to women's continued progress toward full and equal participation in American life.

In the 30 years since Roe v. Wade, the variety and level of women's achievements have reached higher levels. Now the Supreme Court in 1992 observed this. They said:

> The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.

That is why I believe the freedom to choose is no more negotiable or should be no more subject to the whims of the Senate or the House than the freedom to speak or the freedom to worship. It is a matter of trusting women to make the right decision.

I strongly urge my colleagues to vote to disagree with the House version of the bill but not to do it in some phony sense; that somehow we are going to vote but that is not what I mean. I think votes around here have consequences. They have meaning. That is the language. The sense of the Senate that the decision of the Supreme Court in Roe v. Wade is appropriate and secures an important right, and such decisions should not be overturned. That is all it says. The House would not adopt that. The House wouldn't adopt that.

It is my hope that the conferees will preserve the Roe v. Wade resolution. But again, it is the Republican leadership that runs the Senate and runs the House. It is the Republican leadership that repeatedly wanted to restrict a woman's right to choose. It is the Republican leadership that says the language of Roe v. Wade is extreme, and that every woman in America ought to understand that—especially young women whose lives are ahead of them, who have grown up with more freedom, more avenues open to them to fulfill their choices in life as to who they want to be and what they want to do than was ever available to women in my generation.

I think many young women in America today just take it for granted that if they should ever find themselves in a situation where they might seek an abortion, they will be able to do so.

I talk with young women. I recently came off a political campaign last year. I had many young women talk about this time after time after time—college-age women, young women who say to me: There is no way that they are ever going to take away my right to choose; it just won't happen.

They don't believe it could happen. I hate to disappoint these young women.

The vote here was 52 to 47. It was that close. It could be overturned. This Senate, this House, and this President could overturn that and take it away and turn the clock back. And that is what some want to do.

I have no doubt that the Senator from Pennsylvania is sincere in his beliefs. I don't doubt that for a minute. And he is certainly entitled to his beliefs. He is not entitled to force the women of America to believe as he does. The women of America ought to make their own choices and not have us make them for them.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BROWNBACK. Mr. President, I rise to speak on the issue of banning partial-birth abortion in the United States.

We have a unique opportunity to end this grisly practice of partial-birth abortion in this country. Sadly, some in this Chamber have delayed a vote to send this bill to conference and then to the President. That is what needs to take place. This has passed the body repeatedly. The President is ready to sign it. It is time to move forward on this issue.

This is an important milestone. This will be the first time since the Supreme Court decision of Roe v. Wade that the Congress will have curtailed in any way the practice that results in the death of an innocent human being and the emotional wounding of the mother. In this process, both are victims—the child and the mother.

The partial-birth abortion procedure, which former Senator Moynihan called the closest thing that he had seen to infanticide, is something that needs to be banned once and for all. This comes from both sides of the aisle. This comes from the American public. The vast majority of the American public, over 77 percent, support banning this procedure of partial-birth abortion. They see this as it is, as clearly the late-term killing of a child. And it ought to be stopped. It should have no place in a civilized country. It should have no place in a country such as the United States which stands for human rights and the dignity of the individual.

I believe the true mark of a civilized society is not the level of human dignity that it confers on the strong and wealthy. Its true mark is on how much it confers on the vulnerable and on the oppressed. Clearly, an abortion procedure that dismembers and kills a partially born human being has no place in a civilized society.

Aside from partial-birth abortion, it is becoming increasingly clear that the impact abortion has on this society, on the people, and particularly on the women who have had abortions, is itself profound.

I will talk briefly about the impact of having an abortion on a woman. There are an increasing number of studies coming forward about the woundedness that takes place to a woman.

I mention to my colleagues and to those watching a particular Web site titled ''Women Deserve Better.'' I have met with the leadership from this group. A number of the women have had abortions—some of them have not—and deeply regret it, going through years of suffering, emotional suffering, personal suffering, physical suffering, as a result. They have now said: We were not told the story at that time. We were not told the truth of the amount of suffering we would go through. We were told this would take place and it would be quick and easy and it would be over with and that would be it. And it is far from the truth.

I cite one study from their Web site ''Women Deserve Better,'' talking about psychological and emotional complications reported in a 1994 survey of women who had abortions and sought counseling, finding they experienced a range of problems. These are the women who have had abortions, including increased use of drugs and/or alcohol to deaden their pain, recurring insomnia and nightmares, eating disorders that began after they had the abortion, suicidal feelings, and many even attempted suicide. This is a report they have cited.

They went on to also cite who is at high risk for developing serious emotional and psychological problems following an abortion. They list a number of groups. One was women who had abortions after 12-weeks' gestation. That is certainly the case in partial-birth abortions where you have a gestation that would be over 12 weeks.

People should look at this. I ask unanimous consent to have this printed in the RECORD at the end of my comments.

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

(See exhibit No. 1.)

Mr. BROWNBACK. We have two victims here: the child and the woman.

I am also particularly concerned that the widespread acceptance of this brutal practice of partial-birth abortion has already significantly coarsened public attitudes toward human life in general, particularly toward the most vulnerable in our society, whether they are the unborn or old and infirm. This coarsening of public attitude over the past several years has made other assaults against the dignity of human life possible, assaults such as partial-birth abortion, euthanasia, assisted suicide, destructive embryo research, and now even human cloning where we would research on humans, we would

patent a person and then research on them.

Furthermore, new studies in groups are coming forward addressing the horrible impact, as I noted earlier, on women who have had abortions and what this abortion's impact is on the woman.

We all have a duty, an obligation, as citizens of the United States to stand up against the moral outrage of abortion. Human life is sacred. It is a precious gift. Human life is not something to be disposed of by those with more power. Yet one of the most extreme assaults against human dignity is made against some of the most innocent among us. Whether from the first moments of life, to the moments just before birth, a child is a precious and unique gift, a gift never to be given or to be created again.

It seems, therefore, that in some measure this debate is about whether or not that child prior to birth is a child at all. That really is the central question. Is that child, before birth, a child at all? Is this young human a person or is it a piece of property? That is the real debate. One has to conclude this child is a child; it is not property. This harkens back to the slavery debate.

I also point out there is new evidence on this, as well. We try to debate: Is the child in the womb a child or property?

I note a news article that came out Sunday in this country in the Chicago Sun Times—and also in Australia in Sunday's Herald Sun—which reported that Dr. Stuart Campbell, professor and chair of the Department of Obstetrics and Gynecology in the Fetal Medicine Unit at St. George's Hospital in London, a man who pioneered 3–D ultrasound technology in 2001, said he has seen fetuses moving their fingers as early as 15 weeks' gestation, yawning at 18 weeks, and smiling and crying at 26 weeks. We are seeing this done at 3½ months.

Doctors currently believe fetuses cannot feel pain until at least 12 weeks' gestation when the fetus's nervous system is formed, but we are finding more and more, earlier and earlier, that what this child is feeling, seeing, and knowing, moving their fingers at 15 weeks—is that a child that moves those fingers or is it a piece of property? Is it a robot? Is it a blob of tissue or is it a child?

What impact does it have on the mother if that child's life is terminated? At any point in time from that point forward, what impact does it have on the mother when that child's life is terminated? Imagine yourself, what impact does it have on you when your child's life is ended? What impact does that have when you back it up in time? It has a profound impact on the individuals involved. It has a profound impact on society. That is why this process must be ended. That is why we must stop partial-birth abortion. It is hurting everyone. It is hurting the society. It is hurting the people involved. It is hurting the child who is killed in this process. And it is hurting everyone.

Elizabeth Cady Stanton, one of the women depicted in the Portrait Monument, foresaw this awful view of human life in a letter she wrote in October to Julia Ward Howe in October of 1873. She said:

> When we consider that women are treated as property, it is degrading to women that we should treat our children as property to be disposed of as we see fit.

That was in 1873. That quote is applicable today. The Congress must speak against this degradation of human life. These are life issues of enormous consequence and they are issues by which history and eternity will judge us.

Finally, I would like to close with a quote from Mother Teresa, one of my personal heroes. Her concern for the poorest of the poor and her service to them was above reproach. Her work is being carried on today in India and around the world. I am sure it is going to be carried on for years to come.

She once said this:

> Many are concerned with the children of India, with the children of Africa where quite a few die of hunger, and so on. Many people are also concerned about the violence in this great country of the United States. These concerns are very good. But often these same people are not concerned with the millions being killed by the deliberate decision of their own mothers. And this is the greatest destroyer of peace today—abortion which brings people to such blindness.

And that is why this practice must be ended.

Mr. President, I say to my colleagues, this practice is going to be ended. It is going to end this year. When this body passes this bill, when the conference finally meets, when the conference report comes back and the conference report is passed, when the President signs this into law, this practice is going to stop.

It is going to be the point in time when we as a country start waking up and looking at the huge cost of taking these young lives, of what it has done to us, what it has done to the children, what it has done to the mothers involved, and what it has done to us as a society.

But, thankfully, this procedure is going to end this year. I think then we as a country—and we are now—will start waking up, saying: It just isn't right to take this child's life. You end up with two victims, one dead and one wounded, in the process.

Mr. President, I yield the floor.

EXHIBIT 1

ABORTION HURTSWOMEN—MEDICAL AND PSYCHOLOGICAL TALKING POINTS

1. 43% of American women will have at least one abortion by age 45.

2. In the U.S., over 140,000 women a year have immediate medical complications from abortion.

3. This includes problems such as: infection, uterine perforation, hemorrhaging, cervical trauma, and failed abortion/ongoing pregnancy.

4. Abortion increases a woman's risk of breast cancer by 30%.

5. Childbirth actually protects against cancer of the reproductive system.

6. After an abortion there is a higher risk of developing cervical, and ovarian cancer.

7. Abortion can lead to infertility, a serious long-term complication that often goes undetected for many years.

8. Abortion can lead to complications in future pregnancies including: premature birth, placenta previa, and ectopic pregnancy.

9. In the 2 years following an abortion women have a death rate twice as high as women who continue with their pregnancies.

10. A woman who undergoes an abortion has a suicide risk six times higher than women who have given birth to a child.

11. It is minorities who suffer from the greatest number of serious complications and death after abortion.

12. Psychological and emotional complications reported in a 1994 survey of women who had abortions and sought counseling found that they experienced a range of problems including: increased use of drugs and/or alcohol to deaden their pain, reoccurring insomnia and nightmares, eating disorders that began after the abortion, suicidal feelings, and many even attempted suicide.

13. Who is at high risk for developing serious emotional and psychological problems following and abortion? Teenagers; Women who already have children; Women who have abortions after 12 weeks gestation; Women who feel pressured into the abortion; Women struggling with value conflicts.

This information is important for every woman to know, but it is especially relevant for parents of teens because of the impact abortion can have on a minor's emotional health, physical health, fertility, and future pregnancies.

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2. This is based on a complication rate of 11% and assuming the yearly abortion rate is 1.3 million U.S. women a year. Most abortion advocates claim the complication rate is only 1%, but this is inaccurate when the data is analyzed. According to the Royal College of Obstetricians and Gynecologists in the UK, the immediate physical complication rate from abortions is at least 11%, primarily infections that can lead to a host of other problems including pain and infertility. The UK statistics have been recently published in January of 2001. See: Royal College of Obstetricians and Gynecologists (UK). The care of women requesting induced abortion: 4. Information for women. 2000.

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This statistic is important to note because many of these deaths are due to complications from the abortion and are documented as such. Thus, the presenting cause of death will be the complication, not the abortion that caused it.

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12. The Post Abortion Review, 2, (3): 4–8, Fall 1994, published by the Elliott Institute, PO Box 7348, Springfield, IL 62791–7348. It is important to note that many in the psychiatric community deny any serious emotional trauma after an abortion, but this has happened under similar circumstances before. It took years for the medical community to recognize Post Traumatic Stress in Vietnam veterans; ironically women who have undergone abortion often fit the profile of someone suffering from Post-Traumatic Stress according to the Diagnostic and Statistical Manual IV (standard for diagnosis of psychiatric illness in the United States).

13. The Post Abortion Review, 2, (3): 4–8, Fall 1994, published by the Elliott Institute, Springfield, IL. See also Forbidden Grief: The Unspoken Pain of Abortion by Theresa Burke, Ph.D, Acorn Books, Springfield, IL, © 2002 for more information on the emotional and physical pain women go through after an abortion.

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

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

MORNING BUSINESS

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

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

VICE PRESIDENT CHENEY'S TIES TO HALLIBURTON

Mr. LAUTENBERG. Mr. President, I rise to discuss a disturbing development that has just come to light. This development questions Vice President CHENEY's continuing financial ties to Halliburton, the oil services company he once headed.

This past Sunday, the Vice President made the following statement to Tim Russert on ''Meet the Press.'' I quote from that statement. The Vice President said:

Since I left Halliburton to become George Bush's Vice President, I've severed all of my ties with the company, gotten rid of all of my financial interest. I have no financial interest in Halliburton of any kind and haven't had, now, for over three years.

After he made that statement, my curiosity led me to take a look at the Vice President's financial disclosure records. What I saw in those reports was completely at odds with what he said on television Sunday morning. Vice President CHENEY's official financial disclosure filings with the Office of Government Ethics reveals that not only does the Vice President continue to have financial ties to Halliburton but also that Halliburton is continuing to provide personal financial benefits to the Vice President.

In the years 2001 and 2002, the Vice President received large ''deferred salary'' payments from Halliburton. In 2001, Halliburton paid Vice President CHENEY $205,298 in salary, and in 2002 Halliburton paid Vice President CHENEY $162,392 in salary. He is scheduled to receive similar payments this year, 2003, and in 2004 and 2005. That is a pretty strong ''financial tie,'' in my view. If you ask every-day Americans if someone has a financial interest in a company that pays them annual compensation, I am certain the answer would be universally ''yes.''

Deferred salary is not a retirement benefit or a payment from a third-party escrow account but, rather, an ongoing corporate obligation that is paid from company funds. If a company were to go under, the beneficiary could lose the deferred salary.

In an attempt to mitigate the Vice President's continuing financial interest in Halliburton, his financial statement disclosure form says he ''acquired'' an insurance policy ''to ensure that he will receive the equivalence of his remaining deferred compensation account with Halliburton.'' The terms of this insurance policy, its costs, and who paid for it are still unclear.

In addition, Vice President CHENEY continues to hold 433,333 unexercised Halliburton stock options. At the end of 2002, Vice President CHENEY's financial disclosure form stated he continued to hold these options, although the exercise prices are above the company's current stock market price. Even though these exercise prices are above current values, these options could in the future bring a substantial windfall, if Halliburton's earnings in stock value continue to grow as it benefits from large government contracts.

This morning, I looked at a chart that showed Halliburton's stock value and its growth from October of last year until the current time. It has grown by about 75 percent while the rest of the industry has remained flat over the years.

These options could bring, as I said, a substantial windfall if earnings in stock values continue to grow—I repeat—because of the value I find people have placed on Halliburton stock resulting in some pretty good contracts they have gotten in dealing with issues in Iraq.

The Vice President has signed an agreement, he said, to donate any profits from these stock options to charity, and has pledged not to take any tax deduction for the donation. Alternatively, he doesn't have to pay taxes on the value growth he would have otherwise paid. But should Halliburton stock prices increase over the next few years, the Vice President could exercise the stock options for substantial profits benefiting not only his designated charity but also providing Halliburton with a substantial tax deduction.

The issue is simple. Vice President CHENEY claims he has no financial ties to Halliburton, but his own financial disclosure report says otherwise. The American people deserve to know about this relationship with Halliburton. He may argue he has structured deals to minimize his financial windfall from his Halliburton arrangements, but he clearly still has ''financial ties'' to the company.

The fact that Halliburton received an enormous contract without a competitive bid or public disclosure—it was the subject of debate which we had on this floor—it was then agreed that all contracts dealing with Iraq and its reconstruction would be part of the public record.

Back in May, I wrote to the chairman of the Governmental Affairs Committee requesting hearings on the no-bid contracts awarded to Halliburton in Iraq. I believe these developments now make it even more important for the Senate to hold hearings. I renew my plea to the Governmental Affairs Committee to hold hearings on the administration's initial contracts with Halliburton.

Just this week, we learned that Halliburton's no-bid contract with the Army Corps has increased from $700 million to nearly $1 billion. It is a lot of money.

The American people deserve answers to these serious questions concerning government ethics and accountability.

I also believe it is in the interest of the administration to cooperate so the air can be cleared and the record set straight so we know once and for all whether the Vice President admits publicly that he has a financial tie with Halliburton or continues to deny it, despite the written record filed with the Senate Ethics Committee.

FUNDING FOR WILDFIRES

Mr. BURNS. Mr. President, as we are rolling along, trying to complete our work on appropriations, it won't be long that we will have the appropriations for the Interior Department on the Senate floor. I would just like to bring my colleagues up to date on some of the challenges we will be facing and how we probably have to come up with some imagination to take care of some of the problems.

We watched the weather reports from my State of Montana. Montana has had an unusually hot, dry summer. We have also been plagued with wildfires this year. In fact, the lion's share of the fires has been in my State. I want to speak for a moment on something I think has great importance—the need to provide additional funds to the Forest Service and the Department of the Interior to pay for the cost of fighting this year's wildfires.

Nationwide, the numbers are staggering. Once again, we have suffered a terrible fire season. Little does America know, 27 firefighters lost their lives this year in the line of duty. Over 789 homes and other structures have been destroyed, and 2.8 million acres have burned. During the recent Labor Day weekend, 25,000 firefighters were working on fires in every State in the West.

As in 2000, my home State of Montana has been hit by the largest share of the damage. In fact, for much of the summer, half of the total acres burning in the whole Nation were burning in Montana. So far we have lost 600,000 acres, and the fire continues today. Weather conditions, with cooler temperatures and 2.5 inches of rain this week reported in Big Fork, MT, have helped. But there are still 20 fires that have the potential of blowing up unless the moisture continues.

During the August break, I saw the devastating impact of these fires on our parks, forests, and communities firsthand. The fires were so bad that portions of Glacier National Park and Yellowstone Park were closed to the public for many days, as were many national forest lands and, this time, wildlife refuge lands. The impact of these fires is catastrophic, not only on the land but also on the people.

During July and August, hundreds of residents were evacuated as 80 fires burned out of control throughout Montana. Roughly 125 structures were destroyed, and that included 23 homes.

Fighting these fires is expensive. The Forest Service has been spending as much as $20 million a day on firefighting alone. Total expenditures this fiscal year will approach $1 billion. That is taxpayer money. In order to pay for these extraordinary costs, the Forest Service has been forced to borrow $595 million from other nonfire accounts. The Department of the Interior has borrowed $100 million already and is expected to borrow at least $50 million more before the fire season is over. Putting it in a conservative manner, the two agencies together will borrow $850 million from other accounts to fight fires this fiscal year.

Prior to the August recess, the President and the administration submitted a supplemental request for $289 million for fire suppression. My colleagues may recall, I was angry when the House ultimately sent us a supplemental that did not include these funds. In my view, it was highly irresponsible since the fire season was well under way and we knew those funds would be needed.

At this stage, it may be just as well that the House omitted these funds. The pending supplemental request is now totally inadequate in light of what has transpired over the last month. If we were to approve only the pending administration request, we would leave the Forest Service and the Department of the Interior with a combined shortfall in other programs of between $550 and $600 million.

What would be the impact of this? In a word—substantial. The issue is not whether fires will or won't be fought when necessary. Both agencies will continue to protect life, property, and the important natural resources wherever possible. The issue is what won't get done if we fail to repay the accounts that have been raided.

Last year, we were in a similar situation. Both the Forest Service and the Interior borrowed heavily from nonfire accounts. This caused both agencies to stop work on certain things until those amounts were repaid and that account replenished. In the end, we only repaid about 60 cents on every dollar borrowed, which was the amount proposed by the administration in its supplemental request.

The impacts of this shortfall were very real, but the agencies managed to keep most programs above water by managing carryover, canceling defunct projects, and reducing the scope of projects. But as a result of last year's shortfall, this low-hanging fruit is gone.

If we do not act soon to repay in full—and that is my intent, to repay in full the amounts borrowed during the fiscal year 2003—the impacts will be far greater. A wide variety of programs will be deeply affected—from endangered species monitoring to facilities construction, from land acquisition to recreation management, from the processing of grazing permits to the sale of timber. Failing to repay the amounts borrowed will affect all of these things. It amounts to a de facto rescission of funds appropriated by Congress just 6 months ago.

To my colleagues from over the Nation, I would say this is not just a western problem simply because that is where most of the fires burn. It is a problem for every State in the Union because the funds are effectively being borrowed from every State. They are being borrowed in many cases from projects and programs that were funded at the specific request of every Member in this body. If the amounts are not repaid, those amounts will permanently be taken from many of those same projects and programs again. Maybe it will come from a National Park Service construction project. Maybe it will be in Massachusetts. Maybe it will come from land acquisition in Arizona. Maybe it will come out of grazing management in Colorado. More than likely, it will come from all that I have mentioned.

The use of borrowing authority to fight fires is not necessarily a bad thing. It is a reasonable mechanism when the amounts being borrowed are

relatively modest, when sufficient carryover funds are readily available, or when the borrowed amounts are ultimately repaid. But the borrowing has become routine. The amounts involved are massive. We no longer have large carryover amounts in other accounts, and we have habitually not repaid the full amount that was borrowed.

It is a terrible, inefficient way to run a program.

In the past, both the Congress and the administration have been guilty of playing budgetary games with fire suppression funding, but the current situation is only a faint reflection of that fact. Congress included in the fiscal year 2003 appropriations bill essentially the same amounts that were requested by the administration for wildlife fire management. That amount, in turn, was determined by using the 10-year average cost of fire suppression. But that 10-year average no longer is reasonable or a reasonable benchmark for a number of reasons.

Look at our forests. Fuel loads on the floors of our forests are increasing. Increasing costs of personnel and equipment are fully reflected in the 10-year average, and the wildland-urban interface is expanding, which increases the cost of fire suppression.

I think Congress and the administration need to deal with these issues, particularly hazardous fuel loads. But that will not happen overnight, and it does not change the situation we are in today.

To be clear, I have no interest in giving the Forest Service or the Department of the Interior a blank check to fight fires. We must continue to seek ways to reduce costs, and that is why the Appropriations Committee has asked the National Academy of Public Administration to study recent trends in firefighting costs. But while that academy did find some areas for improvement, it found no smoking gun, and there is no silver bullet.

The system is broken, Mr. President, and the administration must work with us to fix it. It cannot rationally expect to produce cost containment in one program by starving the life out of others.

In the short term, we must enact a supplemental that fully repays the amounts they borrowed during fiscal year 2003. I call on the administration to send us another supplemental request for these amounts.

For the longer term, we have to have annual budget requests that more adequately reflect the current reality of suppression costs. We also need to take another look at borrowing authority we traditionally have provided these agencies.

Unless adequate action has already been taken on the impending supplemental, I expect to offer amendments on this subject when the Interior appropriations bill comes to the floor. I hope these amendments will be widely supported by my colleagues.

I appreciate this opportunity to give a little forecast of what is ahead on another appropriations bill because these are tremendous challenges.

I thank the Chair, and I yield the floor.

APPALACHIAN REGIONAL COMMISSION

Mr. FRIST. Mr. President, I rise to express my strong support for the Appalachian Regional Commission, ARC, and to thank Chairman DOMENICI for his leadership and his support to ensure that the Appalachian Regional Commission's fiscal year 2004 funding needs are adequately met.

The ARC was established in 1965 to support economic development in the Appalachian Region. Today, the region includes 410 countries in 13 States, representing a population of more than 23 million. There are 50 counties in Tennessee currently participating in the ARC. Funding provided by Congress is used by the commission to fund locally sponsored projects such as education and workforce training programs, highway construction, water and sewer system construction, leadership development programs, and small business start-ups and expansions.

I am proud that a Tennessean, Anne B. Pope, is currently serving as the Federal Co-Chair of the Commission. In this position, she is working to further the ARC's five primary goals, which include improving education and workforce training, physical infrastructure, civic capacity and leadership, business development, and health care. Each year ARC provides competitive grant funding for several hundred projects to further these goals. In 1965, one in three Appalachian residents lived in poverty. However, by 1990, the poverty rate had been cut in half. ARC programs are helping to shape a brighter future for the Appalachian region by working with local communities to foster economic growth and development.

Last year, Congress reauthorized the ARC's non-highway programs through 2006, and authorized new programs in telecommunications, entrepreneurship, and job-skills training. Moreover, the legislation signed by President Bush reinforced the ARC's commitment to economically distressed counties by mandating that at least half of the Commission's project funding be made available to support activities that benefit distressed areas. These changes will help to create more opportunities for areas still struggling to join the Nation's mainstream economy.

I am proud of the work that the ARC is doing in Tennessee, and I applaud Chairman DOMENICI for his continued support of the ARC's programs. It is my hope that, as we move to conference, we can work together to ensure that the ARC's funding needs continue to be met.

THE FIRST ANNUAL CONGRESSIONAL CONFERENCE ON CIVIC EDUCATION

Mr. DASCHLE. Mr. President, ''A government of the people, by the people and for the people.'' In his immortal description of American democracy, President Lincoln made self-government sound almost easy.

The truth is, democracy is challenging, continuous work. No war, no sacrifice made by one generation—no matter how enormous—can sustain our democracy forever. Ultimately, each generation of Americans must do the work of democracy itself or our democracy atrophies.

''Civic education'' is the term we use to describe the process by which we transmit the knowledge, skills and attitudes that people need in order to be responsible citizens. It is at least as important to the future of our democracy as our economic might or our military power. For that reason, I am very pleased to announce today that the Joint Leadership of the Congress of the United States will host a 3-day Congressional Conference on Civic Education later this month—September 20, 21, and 22.

This Congressional Conference on Civic Education will bring together educators and other experts from every State to focus national attention on the state of civic education in America. I am honored to serve as an honorary host for the conference, along with the majority leader, Senator FRIST, and our counterparts in the House, Speaker HASTERT and Democratic Leader PELOSI.

It is our hope and our expectation that the conference will help launch a nationwide movement, and produce strategic plans to strengthen civic education and civic participation at every level of government—local, State, and national. It is the first of five annual civic education conferences planned by the Joint Leadership.

The goals of this first conference include: increasing public understanding of America's representative democracies and the need for Americans to play a responsible role in their Government; underscoring for policymakers that America's schools play a critical role in preparing students for effective citizenship, and expanding the opportunities for policymakers to participate in carrying out this civic mission; and encouraging the formation of State delegation working groups that will take the lead in improving civic education in their respective States.

The Congressional Conference on Civic Education is a fitting and appropriate way for Congress to join the Nation in commemorating Citizenship Week.

The conference is a project of the Alliance for Representative Democracy, a national project designed to reinvigorate and educate Americans on the critical relationship between Government and the people it serves. The Alliance's members are the National Conference of State Legislatures, the Center on Congress at Indiana University, and the Center for Civic Education. The Alliance for Representative Democracy project is funded by the U.S. Department of Education by act of Congress.

There is no more important or urgent task facing our Nation than making sure that this and future generations of Americans have the skills, knowledge and attitudes required to maintain this Government ''of the people, by the people and for the people.''

Every State delegation attending this first annual Congressional Conference on Civic Education will identify its own specific goals for improving civic engagement in our society and citizenship education in our schools.

I am sure my colleagues join me in applauding the dedicated educators and others who will be traveling to Washington from all over the country for this important conference. We thank them for their time and their commitment to this worthy endeavor. We look forward to hearing their ideas—and hearing about their progress at the second annual Congressional Conference on Civic Education in September 2004.

Among those who are volunteering their time and energy to make this conference possible, and who deserve special thanks are the following, whose names I ask unanimous consent to have printed in the RECORD.

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

FIRST CONGRESSIONAL CONFERENCE ON CIVIC EDUCATION: CONFIRMED DELEGATION LIST

Alabama: Ms. Janice A. Cowin, State Facilitator; Representative Sue Schmitz, Alabama House; Dr. Ethel Hall, Alabama State Board of Education; Mr. Tom Walker, Executive Director, The American Village Citizenship Trust.

Alaska: Ms. Mary Bristol, State Facilitator; Senator Bettye Davis, Alaska State Senate; Representative John Coghill, House Majority Leader, Alaska House of Representatives; Ms. Esther Cox, First Vice Chair, Alaska Board of Education; Mr. Macon Roberts, Treasurer Anchorage School Board.

Arizona: Ms. Lynda Rasndo, State Facilitator; Senator Tim Bee, Arizona Senate; Representative Linda Gray, Arizona House of Representatives; Ms. Kathy Kay, Arizona Department of Education; Mr. David Garcia, Arizona Center for Public Policy.

Arkansas: Ms. Barbara Patty, State Facilitator; Dr. Daryl Rice, Associate Dean, University of Arkansas; Mr. Frank Smith, Social Studies Supervisor, Pulaski County Schools; Ms. Suzanne McPherson, Fort Smith Schools.

California: Mr. Roy Erickson, State Facilitator; Honorable Frank Damrell, Judge, US District Court, Northern District of California; Senator Jack Scott, California Senate; Ms. Kerry Mazzoni Secretary of Education, Office of Governor; Mr. David Gordon, Superintendent, Elk Grove Unified School District; Ms. Michelle Herczog, Social Studies Coordinator Los Angeles County Schools.

Colorado: Ms. Barbara Miller, State Facilitator; Senator Peter Groff, Colorado State Senate; Representative Shawn Mitchell, Colorado House of Representatives; Mrs. Maria Garcia-Berry, President, CRL Associates; Dr. Jane W. Urschel, Associate Executive Director, Colorado Association of School Boards.

Connecticut: Mr. James Schmidt, State Facilitator; Representative Demetrios Giannaros, Connecticut House of Representatives; Ms. Mary Skelly, Social Studies Coordinator, Middletown, CT; Ms. Martha Press, Social Studies Supervisor, Stratford CT Schools; Mr. Randall Collins, Superintendent, Waterford Schools, Pres. Elect ECS.

Delaware: Mr. Lewis Huffman, State Facilitator; Hon. M. Jane Brady, Attorney General of Delaware; Ms. Valerie Woodruff, Secretary of Education, Delaware Department of Education.

District of Columbia: Ms. Deborah Foster, State Facilitator; Ms. Vanessa (Connie) Spinner, Acting State Education Officer; Dr. Roceal Duke, Social Studies Content Specialist, DC Public Schools.

Florida: Ms. Annette Boyd Pitts, State Facilitator; Representative Curtis Richardson, Florida House of Representatives; Representative Renee Garcia, Florida House of Representatives; Mr. Jack Bovee, Florida Department of Education; Dr. Robert Guiterrez, Professor of Education, Florida State University; Mr. John Doyle, Miami—Dade County Public Schools.

Georgia: Dr. Eddie Bennett, State Facilitator; Senator Joey Brush, Georgia Senate; Representative Bob Holmes, Georgia House of Representatives; Ms. Janet Wiley, President, Georgia Association of Curriculum and Instructional Supervisor; Ms. Robynn Holland, Social Studies Coordinator, State Department of Education; Ms. Stephanie Caywood, Office of the Secretary of State.

Hawaii: Dr. Lyla Berg, State Facilitator; Senator Ron Menor, Hawaii Senate; Representative Roy Takumi, Hawaii House of Representatives; Mr. Sherwood Hara, State Board of Education; Mr. Roger Takabayashi, President Hawaii State Teachers's Association.

Idaho: Dr. Dan Prinzing, State Facilitator; Dr. Marilyn Howard, Superintendent of Public Instruction; Senator Denton Darrington, Idaho Senate; Mr. Tim Hurst, Chief Deputy, Secretary of State; Mr. Doug Oppenheimer, Oppenheimer Development Company.

Illinois: Dr. Frederick D. Drake, State Facilitator; Senator Steven Rauschenberg, Illinois Senate, Vice President, NCSL; Representative Suzanne Bassi, Illinois House of Representatives; Dr. Darlene Ruscitti, Regional Superintendent, DuPage County Schools; Ms. Maggie Oleson, Legislative Consultant, State Farm Insurance Co.; Dr. John Craig, Social Science Assessment, Illinois Board of Education; Mr. Jon Schmidt, Service Learning Manager, Chicago Public Schools.

Indiana: Dr. John J. Patrick, State Facilitator; Mr. Peter Bomberger, Attorney at Law, Chair Citizenship Education Committee, IN Bar; Mr. Lynn R. Nelson, Ackerman Center for Democratic Citizenship, Purdue University; Dr. Sharon Brehm, Chancellor, Indiana University.

Iowa: Mr. Jason Follett, State Facilitator; Honorable Chet Culver, Secretary of State of Iowa; Senator Nancy Boettger, Iowa State Senate; Dr. Jeffrey Cornett, Dean College of Education, University of Northern Iowa.

Kansas: Mr. Dave Dubois, State Facilitator; Senator Dwayne Umbarger, Kansas State Senate; Dr. Alexa Pochowski, Assistant Commissioner of Education.

Kentucky: Ms. Deborah Williamson, State Facilitator; Senator Jack Westwood, Kentucky Senate; Representative Tanya Pullin, Kentucky House of Representatives; Ms. Cicely Jaracz Lambert, Director, Kentucky Administrative Office of the Courts; Ms. Natalie Stiglitz, Social Studies Consultant, Kentucky Department of Education.

Louisiana: Ms. Maria Yiannopoulos, State Facilitator; Mr. William Miller, Special Assistant to the Superintendent of Education; Mr. R. Edward Hunt, Louisiana Center for Law and Civic Education; Ms. C. Kevin Hayes, Attorney At Law, Roedel, Parsons, Koch, Frost, Balhoff & McCollister; Mr. Jimmy Fahrenholtz, Member Orleans Parish School Board & Attorney At Law.

Maine: Ms. Julia Underwood, State Facilitator; Mr. Patrick Phillips, Maine Department of Education; Ms. Crystal Ward, Maine Education Association; Mr. Richard Lyons, Superintendent Hampden Academy, Past Pres. ME Superintendent's Assn.

Maryland: Ms. Marcie Taylor-Thoma, State Facilitator; Ms. Sharon Cox, Vice President, Montgomery County Board of Education; Delegate John Hurson, Maryland House of Delegates, President—Elect, NCSL; Delegate David D. Rudolph, Maryland House of Delegates.

Massachusetts: Ms. Diane Palmer, State Facilitator; Senator Richard T. Moore, Massachusetts State Senator; Representative Dan Bosley, Massachusetts House of Representatives; Dr. Sheldon Berman, Superintendent, Hudson Public Schools; Ms. Susan Wheltle, Massachusetts Department of Education.

Michigan: Ms. Linda Start, State Facilitator; Senator Ron Jelenik, Michigan State Senate; Representative Hoon-Yung Hopgood, Michigan House of Representatives; Ms. Kathleen Strauss, President State Board of Education; Mr. John Lore, Executive Director, Connect Michigan Alliance; Mr. Eric Rader, Policy Division, Office of the Governor; Ms. Leslie Salba, DC Office of the Governor.

Minnesota: Mr. Rick Theisen, State Facilitator; Senator Steve Kelley, Majority Whip, Minnesota State Senate; Mr. Charlie Skemp, Social Studies Specialist, Minnesota Department of Education; Ms. Mary Ann Van Hooten, State Department of Education; Ms. Lisa Wilde, Minnesota Bar Association, National Mock Trial.

Mississippi: Dr. Susie Burroughs, State Facilitator; Senator Alice Harden, Mississippi State Senate; Representative Mike Lott, Mississippi House of Representatives; Dee Chambliss, Assistant Secretary of State for Education and Publications; Ms. Judith Couey, Bureau Director, Mississippi Department of Education.

Missouri: Ms. Millie Aulbur, State Facilitator; Dr. Kent King, Commissioner, Department of Elementary and Secondary Education; Representative Sharon Sanders Brooks, Missouri House of Representatives; Representative Walter Bivins, Missouri House of Representatives; Mr. Stan Johnson, Superintendent, School of the Osage.

Montana: Dr. Bruce Wendt, State Facilitator; Senator Sam Kitzenberg, Montana Senate; Representative Gary Branae, Montana House of Representatives; Ms. Stephanie Wasta, School of Education, University of Montana.

Nebraska: Mr. Mitch McCartney, State Facilitator; Honorable John Gale, Secretary of State, State of Nebraska; Senator DiAnna Schimek, Nebraska Unicameral; Mr. Joe Higgins, Member, State Board of Education; Ms. Lauren Hill, Education Assistant to the Governor.

Nevada: Ms. Judith Simpson, State Facilitator; Representative William Horne, Nevada House of Representatives; Mr. Larry Struve, Chairman, NV Advisory Committee on Participatory Democracy; Dr. Keith Rheault, Deputy Superintendent, NV Dept. of Education.

New Hampshire: Mr. Mica B. Stark, New Hampshire Institute of Politics, State Facilitator; Mr. Andrei Campeanu, President, ATE Media Services.

New Jersey: Ms. Arlene Gardner, State Facilitator; Assemblyman Craig Stanley, New Jersey House; Ms. Lucille Davey, Education Assistant to the Governor; Mr. John Dougherty, State Department of Education.

New Mexico: Ms. Dora Marroquin, State Facilitator; Representative Rick Miera, New Mexico House of Representatives; Ms. Virginia Trujillo, State of New Mexico Office of the Governor; Dr. Joseph Stewart, Professor, University of New Mexico.

New York: Professor Stephen Schechter, State Facilitator; Ms. Rita Lashway, Deputy Executive Director, New York State School Boards Association; Mr. A. Thomas Levin, President, New York State Bar Association; Ms. Gail Kelly, President, New York Council of Educational Associations.

North Carolina: Ms. Debra Henzey, State Facilitator; Senator Joe Sam Queen, North Carolina Senate; Representative Linda Johnston, North Carolina House of Representatives; Ms. Maria Theresa Unger Palmer, Member North Carolina Board of Education; Ms. Susan Giamportone, North Carolina Bar Association; Ms. Tracey Greggs, Department of Public Instruction Social Studies Section; Ms. Carol Vogler, Career Center High School, Past Pres. Carolina Council for the Social Studies.

North Dakota: Mr. Phil Harmeson, Co-State Facilitator; Senator Ray Holmberg, Co-State Facilitator; Representative Dennis Johnson, North Dakota House of Representatives; Honorable Wayne Stenehjem, Attorney General, State of North Dakota; Honorable Mary Maring, Justice North Dakota Supreme Court.

Ohio: Mr. Jared Reitz, State Facilitator; Representative Dixie Allen, Ohio House of Representatives; Dr. Donald Stenta, Associate Director, the John Glenn Institute; Mrs. Patricia Allen Day, Roosevelt Center, Dayton Public Schools; Ms. Linda Petz, Stark Educational Service Center; Mr. Frank Underwood, Assistant Director, Ohio Community Service Council.

Oklahoma: Mr. Michael Reggio, State Facilitator; Representative Bill Nations, Oklahoma House; Ms. Lisa Pryor, Learn & Serve Coordinator State Dept. of Education; Ms. Gina Wekke, Sr. Coordinator, Oklahoma Regents for Higher Education; Ms. Denise Rhodes, Oklahoma Council for the Social Studies; Ms. Lyndal Caddell, Noble Middle School.

Oregon: Ms. Barbara Rost, State Facilitator; Senator Ryan Deckert, Oregon State Senate; Representative Pat Farr, Oregon House of Representatives; Mr. James Sager, Educational Policy Advisor, Office of the Governor; Mr. Pat Burk, Associate Superintendent Federal Programs, Department of Education.

Pennsylvania: Ms. Frances J. Warren, State Facilitator; Representative Jess Stairs, Pennsylvania House of Representatives; Mr. Albert Cunningham, Superintendent, Montoursville Area School District; Mr. James Wetzler, Social Studies Coordinator, Pennsylvania Department of Education.

Rhode Island: Mr. Michael Trofi, State Facilitator; Honorable Matt Brown, Secretary of State of Rhode Island; Senator Hanna Gallo, Rhode Island State Senate; Representative Susan Story, Rhode Island House of Representatives; Ms. Maria Escudero, Office of the Secretary of State; Mr. James Parisi, Field Representative, RI Federation of Teachers & Health Professionals.

South Carolina: Mr. Paul Horne, State Facilitator, Invited; Senator Warren Giese, South Carolina State Senate; Representative Robert Walker, South Carolina House; Dr. Harriett L. Rucker, State School Board; Mr. James Bryan, Education Associate, Department of Education.

South Dakota: Dr. Jack Lyons, State Facilitator; Senator Drue Vitter Lange, South Dakota House of Representatives; Ms. Glenna Fouberg, President South Dakota School Board.

Tennessee: Ms. Janis Kyser, State Facilitator; Senator Randy McNally, Tennessee State Senate; Representative Beth Harwell, Tennessee House of Representatives; Representative Joe Towns, Jr., Tennessee House of Representatives; Mr. Richard Ray, Chairman State School Board; Mr. Bruce Opie, Legislative Liaison, Department of Education; Dr. Ashley Smith Jr., President Tennessee Middle School Association.

Texas: Mrs. Jan Miller, State Facilitator; Judge Royal Furgeson, U.S. District Court Judge, Western District of Texas; Mr. George Rislov, Director of Social Studies, Texas Education Agency; Mr. Hugh Akin, Executive Director, Hatton W. Sumner Foundation; Ms. Carlen Floyd, State Board for Teacher Certification; Ms. Patricia Ann Hardy, Member State Board of Education.

Utah: Ms. Kathy Dryer, State Facilitator; Chief Justice Christine M. Durham, Utah Supreme Court; Senator Howard A. Stephenson, Utah State Senate; Representative LaVar Christensen, Utah House of Representatives; Ms. Janet Canon, Vice President, State Board of Education.

Vermont: Vee Gordon State Facilitator, Senator Matt Dunne, Vermont State Senate; Representative Malcolm Severance, Vermont House; Mr. Patrick Burke, Principal South Burlington High School.

Virginia: Mr. Andrew Washburn, State Facilitator, Delegate James Dillard, Virginia House of Delegates; Ms. Susan Genovese, Vice President, Virginia Board of Education; Dr. Patricia Wright, Assistant State Superintendent of Education.

Washington: Mrs. Kathy Hand, State Facilitator, Dr. Terry Bergeson, State Superintendent of Public Instruction; Senator Steve Johnson, Washington State Senate; Representative Dave Quall, Washington House of Representatives, Representative David Upthegrove, Washington House of Representatives; Mr. Steve Mullin, Vice President, Washington State Roundtable.

West Virginia: Mrs. Priscilla Haden, State Facilitator, Member, State Board of Education; Delegate Ray Canterbury, West Virginia House of Delegates; Dr. David Stewart, State Superintendent, West Virginia Department of Education; Mr. William Raglin, President, West Virginia School Boards Association; Ms. Sharon Flack, Social Studies Supervisor, State Department of Education.

Wisconsin: Ms. Dee Runaas, State Facilitator; Honorable Elizabeth A. Burmaster, Superintendent of Public Instruction; Senator Robert Jauch, Wisconsin State Senate; Representative Luther S. Olsen, Wisconsin House of Representatives; Mr. Richard Grobschmidt, Assistant State Superintendent of Education; Ms. Kori Oberle, Wisconsin Educational Communications Board.

Wyoming: Mr. Matt Strannigan, State Facilitator; Senator Mike Massie, Wyoming State Senate; Representative Rosie Berger, Wyoming House of Representatives; Ms. Sheri Tavegie, State Department of Education.

U.S. POLICY IN IRAQ

Mr. LEVIN. Mr. President, I would like to share with my colleagues the recent remarks of our former colleague Senator Max Cleland concerning U.S. policy in Iraq.

This is a passionate, powerful speech by a true American hero whose tremendous service to, and personal sacrifice for, this country should make of all of us mindful of his cautions and warnings. I ask unanimous consent that former Senator Cleland's speech by printed in the RECORD.

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

[DSCC Iraq Policy Forum, Washington, DC, Sept. 15, 2003]

DISASTER IN THE DESERT

(Former Senator Max Cleland, D–Georgia)

''The public had been led into a trap from which it will be hard to escape with dignity and honor. They have been tricked into it by a steady withholding of information,'' he said. ''The Baghdad communiques are belated, insincere, incomplete. Things have been far worse than we have been told, our administration more bloody and inefficient than the public knows. He added: ''We are today not far from a disaster''—T.E. Lawrence The Sunday Times of London August 22, 1920.

Let me see if I can get this straight.

The President of the United States decides to go to war against a nation led by a brutal dictator supported by one party rule. That dictator has made war on his neighbors. The President decides this is a threat to the United States. In his campaign for President he gives no indication of wanting to go to war. In fact, he decries the over-extension of American military might and says other nations must do more. However, unbenounced to the American public, the President's own Pentagon advisors have already cooked up a plan to go to war. All they are looking for is an excuse.

An element of the U.S. military is under attack. The President, his Secretary of Defense and his advisors sell the idea to Congress and the American people that it is time to go to war. Based on faulty intelligence, cherry-picked information is fed to Congress and the American people. The President goes on national television to explain the case for war, using as part of the rationale for the war an incident that never happened. The Congress buys the bait hook, line and sinker and passes a resolution giving the President the authority to use ''all necessary means'' to prosecute the war.

The war is started with an air and ground attack. Initially there is optimism. The President says we are winning. The cocky, self-assured Secretary of Defense says we are winning. As a matter of fact, the Secretary of Defense promises the troops will be home soon.

However, the truth on the ground that the soldiers face in the war is different than the political policy that sent them there. They face increased opposition from a determined enemy. They are surprised by terrorist attacks, suicide bombers, village assassinations, increasing casualties and growing anti-American sentiment. They find themselves bogged down in a guerrilla land war, unable to move forward and unable to disengage because there are no allies in the war to turn the war over to. There is no plan B. There is no exit strategy. Military morale declines. The President's popularity sinks and the American people are increasingly frustrated by the cost of blood and treasure poured into a never-ending war.

Sound familiar? It does to me!

The President was Lyndon Johnson.

Got Ya!

The cocky, self-assured Secretary of Defense was Robert McNamara.

Got ya again!

The Congressional resolution was the Gulf of Tonkin resolution.

You are catching on!

The war was the war that me, John Kerry, Chuck Hagel, John McCain and three and-a-half million other Americans of our generation were caught up in. It was the scene of America's longest war. It was also the locale

of the most frustrating outcome of any war this nation has ever fought.

Unfortunately, the people who drove the engine to get into the war in Iraq never served in Vietnam.

Not the President.

Not the Vice-President.

Not the Secretary of Defense.

Not the Deputy Secretary of Defense.

Too bad. They could have learned some lessons.

First, they could have learned not to underestimate the enemy. The enemy always has one option you cannot control. He always has the option to die. This is especially true if you are dealing with true believers and guerrillas fighting for their version of reality—whether political or religious. They are what Tom Friedman of the New York Times calls the ''non-deterables.'' If those non-deterables are already home in their country, they will be able to wait you out until you go home.

Second, if the enemy adopts a 'hit and run' strategy designed to inflict maximum casualties on you, you may win every battle but the battles you fight (as Walter Lippman once said about the Vietnam War,) can't win the war.

Third, if you adopt a strategy of not just preemptive strike but also preemptive war you own the aftermath. You better plan for it. You better have an exit strategy because you cannot stay there indefinitely unless you make it the 51st state. If you do stay an extended period of time, you then become an occupier, not a liberator. That feeds the enemy against you.

Fourth, if you adopt the strategy of preemptive war, your intelligence must be not just ''darn good,'' as the President has said, it must be ''bullet proof,'' as Secretary Rumsfeld claimed the administration had against Saddam Hussein. Anything short of that saps credibility.

Fifth, if you want to know what is really going on in the war, ask the troops on the ground, not the policy makers in Washington. The ''ground truth,'' as the soldiers call it, is always more accurate than the truth expounded through the mouths of those who plan the war and have a political, personal and emotional investment in their policy. They will bend any fact, even intelligence, to their own ends. If the ground truth and the policy truth begin to diverge, ''Shock and Awe'' will turn into what one officer in Iraq has described as, ''Shock and Awe S__!''

Sixth, in a democracy instead of truth being the first casualty in war, it should be the first cause of war. It is the only way the Congress and the American people can cope with getting through it. As credibility is strained, support for the war and support for the troops goes downhill. Continued loss of credibility drains troop morale, the media becomes more suspicious, the public becomes more incredulous and the Congress is reduced to hearings and investigations.

Instead of learning the lessons of Vietnam, where all of the above happened, the President, the Vice-President, the Secretary of Defense and the Deputy Secretary of Defense have gotten this country into a disaster in the desert. They attacked a country that had not attacked us. They did so on intelligence that was faulty, misrepresented and highly questionable. A key piece of that intelligence was an out-right lie which the White House put into the President's State of the Union speech. These officials have over-extended the American military, including the Guard and the Reserve and expanded the United States Army to the breaking point. A quarter of a million troops are committed to the Iraq war theater, most bogged down in Baghdad. Morale is declining and casualties continue to increase. In addition to the human cost, the funding of the war costs a billion dollars a week, adding to the additional burden of an already depressed economy.

The President has declared ''major combat over'' and sent a message to every terrorist, ''Bring them on.'' As a result, he has lost more people in his war than his father did in his and there is no end in site.

Military commanders are left with extended tours of duty for servicemen and women, told long ago they were going home, and keeping American forces on the ground where they have become sitting ducks in a shooting gallery for every terrorist group in the Middle East.

Welcome to Vietnam, Mr. President. Sorry you didn't go when you had the chance.

HONORING OUR ARMED FORCES

Mr. JEFFORDS. Mr. President, on Friday, September 19, 2003, Vermonters will gather in Proctor, VT, for a happy, yet solemn occasion. They will assemble on that day to reopen Proctor's Marble Arch Bridge and to dedicate a memorial to SGT Justin Garvey, United States Army, 101st Airborne Division.

The joy will be in the celebration of the new bridge, a centerpiece of Proctor's infrastructure. It is the town's only bridge to span Vermont's longest river, the Otter Creek. Originally constructed in 1915, the new bridge will reestablish an historic gateway between the east and west of Justin's home community.

Proctor's Marble Arch Bridge, adorned with Highland Marble quarried from beneath Vermont's grand mountains, is an elegant example of artistry, craftsmanship and heritage, values that we Vermonters cherish and respect.

SGT Justin Garvey, Proctor High School Class of 1998, exemplified these values as well. Justin was, by all accounts, an outstanding young man. He was known as a strong competitor, a motivated student, and an avid outdoorsman. His friends knew him as being good hearted and good humored. Justin was a loyal brother, a dedicated son and a loving husband.

Justin Garvey loved and is loved by his family and community.

He crossed the Marble Arch Bridge innumerable times. When he last crossed this bridge, he was on a journey that would take him to serve in the United States Army 101st Airborne Division, one of America's most elite defense forces.

Not every soldier has the ''stuff'' to make the 101st Airborne. But it was no surprise to those who knew him that Justin Garvey studied and trained and worked to become a top-notch soldier. A fellow soldier wrote that ''He was a man who had no enemies . . . he is everything I want to be as a man. Everyone who ever met Justin was better for it. It was an honor to have served with him up to the end, that night. He taught me what a true hero is.''

From before its inception and throughout its history, America has depended upon the willingness of men like Justin Garvey to put themselves in harm's way for the sake of country and countrymen.

Indeed, this Nation has survived only because of such men and such women.

When Justin Garvey last crossed Proctor's historic Marble Arch Bridge, he was already a hero to his family and friends in this community. Today, all of Vermont and all of America recognize Justin Garvey as an American hero.

Indeed, the world is in his debt.

It is fitting and proper that we should dedicate a memorial to SGT Justin Garvey, Proctor native, American hero.

May God Bless Justin and his family.

IN REMEMBRANCE OF THE VICTIMS OF THE KATYN FOREST MASSACRE

Mr. CORZINE. Mr. President, I rise today to honor the memory of the victims of the Katyn Forest Massacre in 1940. Katyn Forest is a quiet wooded area near the Gneizdovo village, a short distance from Smolensk in Russia. It was at this site, on Soviet leader Joseph Stalin's orders, that the Soviet NKVD shot and buried more than 4,000 Polish service personnel that had been taken prisoner when the Soviet Union invaded Poland in September 1939. Most of these victims were Polish army reservists—lawyers, doctors, scientists and businessmen, Poland's elite and intelligentsia—who were called up to active service following the Nazi invasion of Poland.

On September 17, 1939, under the terms of a secret Moscow-Berlin treaty, forces of the Soviet Union invaded Poland through its eastern border. Polish troops, overwhelmed by the German invasion on its western border, surrendered to the Red Army on the pretense they would be protected. More than 15,000 Polish soldiers and civilians were sent to prison camps at Kozielsk, Starobielska and Ostashkov in the Soviet Union.

In an effort to eliminate potential threats to Soviet control of Poland and what Stalin described as counter-revolutionary espionage and resistance organizations, Soviet troops, carried out what many have called one of the most heinous war crimes in history. Prisoners in all three Soviet Camps were executed and buried in mass graves. One of these graves was discovered in Katyn Forest, where between four and five thousand Polish bodies were found. There were no trials; there was no justice for these innocent victims.

Although the Soviet Government originally denied their role in this unspeakable atrocity, on February 19, 1989 Soviet scholars released documents that revealed that Stalin had indeed ordered the mass execution. The following year Soviet President Mikhail Gorbachev apologized to the Polish people for the killings. While this admission of guilt provided some closure, it certainly does not erase the

pain and suffering felt by a nation whose entire population was affected by this horrific event. Sixty-three years later, the name Katyn still stirs passions in Poland.

Today, I honor the victims of the Katyn Forest Massacre and commend them for their courage and their sacrifice. For on that fateful day, more than six decades ago, these valiant men paid the ultimate price to secure their country's freedom.

It is my sincere hope that as more people learn about the carnage that occurred at Katyn Forest and the surrounding sites, we will be able to come to terms with this tragedy and help heal the wounds that the great nation of Poland and its citizens still suffer. When we honor the memories of those brave souls who were lost on that tragic day, we will prevent future generations from repeating the same horrors which occurred in our past.

ADDITIONAL STATEMENTS

RHODE ISLAND COUNCIL ON RESIDENTIAL PROGRAMS FOR CHILDREN AND YOUTH

● Mr. CHAFEE. Mr. President, I am proud today to honor the Rhode Island Council on Residential Programs for Children and Youth, RICORP, for 25 years of service to 1,250 of Rhode Island's most needy children.

RICORP developed training programs for childcare workers in Rhode Island throughout the 1980s and by 2000, the council had established training certification programs for childcare workers, supervisors and clinicians. In 2001, RICORP collaborated with the Community College of Rhode Island to develop a college curriculum in ''Children's Residential Programming'' and in September of 2002 the program became a reality.

RICORP has also advanced legislation in the Rhode Island General Assembly in 2000 to give contracted providers rate increases in fiscal year 2001 and 2002. Additionally they lobbied for initiatives to improve the lives of children in care, such as the Higher Education Assistance Grant enacted in 1999. This grant gave youth in out-of-home placement free tuition if they attended one of the State colleges.

These are just a few examples of RICORP's contributions toward improving the lives of needy children in the State of Rhode Island.

I join all Rhode Islanders in congratulating RICORP on its 25th anniversary.●

TRIBUTE TO C. FRANCIS DRISCOLL

● Mr. DODD. Mr. President, I rise to speak in memory of C. Francis Driscoll, of New London, CT, who passed away on August 8 at the age of 68.

Although Frank Driscoll was born in New York, he would become one of New London's most influential and devoted public servants, committing his time and energy, for over 30 years, to making life better for the people of that city.

Frank Driscoll's first work on behalf of New London came from 1961 to 1967, when he was the executive director of the Redevelopment Agency, and a driving force in New London's urban renewal. But after 2 years working in Washington at the Department of Housing and Urban Development he returned to New London to take the job that he would hold for the next 23 years, the position of city manager—the top executive post in the city.

As city manager, Frank Driscoll became known as a man who was very careful with how he spent city funds. A child of the Great Depression, he understood that these were the hard-earned tax dollars of working men and women, and he was always careful to spend those dollars wisely. At the same time, he was also tireless in his efforts to obtain Federal funds to improve the quality of life in New London. In fact, during the 1970s, New London won more money in Federal aid than it raised in local property taxes. These critical funds helped New London improve and renovate its schools, revitalize its business district, and ensure the integrity of its water supply.

Frank Driscoll was a skilled, dedicated, and effective leader. But those who knew him or worked with him will probably remember him even more as a deeply caring and compassionate individual. He treated every city employee as part of an extended family. And when it came to his own family, Frank Driscoll's devotion was second to none.

He was also a man of faith who was a vital member of his community. At St. Joseph's Parish in New London, he was a member of the parish council as well as the church choir. Frank was a man whose faith helped shape every aspect of his life, both public and private.

I know that everyone who has lived in New London since the 1960s feels fortunate that they had Frank Driscoll working on their behalf. And I feel privileged to have had him as a friend.

I offer my most heartfelt condolences to Frank's wife Caroline, to their eight children, nine grandchildren, and to everyone else who knew Frank Driscoll. He will be deeply missed.●

IN TRIBUTE TO JOHN MCKISSICK'S 500TH FOOTBALL WIN

● Mr. HOLLINGS. Mr. President, in light of John McKissick's historic football accomplishments, I ask that this article from the September 11 USA Today be printed in the RECORD.

The article follows.

[From the USA Today, Sept. 11, 2003]

FOOTBALL COACH ALL ALONE AT BRINK OF 500 WINS

(By Jill Lieber)

He's the winningest football coach at any level, going for his 500th victory Friday night. He has 10 state championships and 26 regional titles. And in 52 years at the helm of the mighty Green Wave of Summerville High School, John McKissick is known for something else in this quaint, historic burg, population 27,752: as a leader of the community, the glue that holds the town together.

''John McKissick has been a vital part of forming connections around this town,'' says David Pugh, Summerville High's principal. ''What makes a community successful is the quality of life, and John has shown great leadership in that. He has been able to connect people. He has taught them how to share.''

McKissick, two weeks shy of his 77th birthday, has molded 3,014 teenage boys into players over the years. He has instilled pride in tens of thousands of Summerville High students, cheerleaders, band members, teachers and parents. And he has provided excitement for countless more football fans, who have turned out 10,000 strong, in their green and gold, every Friday night in the fall for the past six decades.

Grandfathers, fathers, uncles, brothers, sons, the next-door neighbor's kid, even the piccolo player down the street: Everybody here is tied to the Green Wave in some way.

Why, McKissick now is coaching the third generation of some Summerville families. His own grandson, Joe Call, a former Green Wave quarterback, is an assistant coach.

Truth be told, the folks in this town, nestled on a piney ridge 25 miles northwest of Charleston, would be lost without McKissick.

''So many leaders have come through the John McKissick system,'' says Bo Blanton, chairman of the school board and former Green Wave quarterback.

''Police officers. Teachers. Lawyers. Doctors. Dentists. Legislators. Coaches. The bond has been formed over the years, the winning tradition of the football program has permeated through the community, all because of the excellence of John McKissick. So many people have felt a part of it. So many people have been inspired by it.''

At 8 p.m. Friday, at McKissick Field, on John McKissick Way, the legendary coach will try to give Summerville yet another treat: The Green Wave (2–0) play local rival Mount Pleasant Wando High (1–1) in what could be McKissick's 500th victory.

Coincidentally, McKissick beat Wando in October 1993 for his 406th victory, which set the national high school football record.

Berlin G. Myers Sr., Summerville mayor the past 33 years and owner of the local lumber company, has declared this John McKissick Week. (Several years ago, Myers actually rescheduled Halloween because it fell on a game night.)

Joan McKissick—who wed her husband in June 1952, just two weeks before he took the job at Summerville—has spruced up the press box with photos of past and present Green Wave players for the media rolling into town for the big game. She's expecting hundreds of family and friends.

Troy Knight, the town's attorney, a former Green Wave ball boy, manager and trainer, is a major player with the 500th Committee. That's a group of local business people who have brainstormed ways to commemorate McKissick's milestone.

They're throwing a party on the field after the game for McKissick's 82 varsity players and their families, if the team wins.

The city will come together Nov. 8 for a fundraiser: Summerville will be establishing a John and Joan McKissick Scholarship.

''Coach McKissick is an educator, first and foremost,'' Knight says. ''His vehicle just happens to be coaching. This is a way for his legacy to live on forever.''

Winning admiration of peers

McKissick, a quiet, unassuming man, has not missed a game in 52 years—631 games.

Not health, not weather, not an act of God has stopped him. He has had only two losing seasons (1957 and 2001).

His wife has missed just three games. She's the Green Wave's official historian and her husband's trusted biographer, thanks to the piles of scrapbooks she has religiously kept throughout his career. She's also the curator of the largest collection of Green Wave artifacts, most engulfing the playroom of their ranch house, which the McKissicks affectionately call The Green Wave Room.

South Carolina Gamecocks coach and friend Lou Holtz is keeping his fingers crossed that McKissick will reach 500 Friday.

''I don't know of any individual who has done more for high school football or for the state of South Carolina than John McKissick,'' Holtz said through his sports information director. ''He not only has taught winning football, he has developed winning young men. He has been so unselfish with his time. His loyalty to Summerville and the state of South Carolina really impresses me.''

Florida State coach Bobby Bowden (334 victories), second to Penn State's Joe Paterno as the winningest Division I-A football coach, also is sending good vibes to his good buddy McKissick.

''The victories bring pride to the state of South Carolina, especially since he is one of their own,'' Bowden said through his school's sports information director. ''It also brings great attention to what you can do if you just persevere. I don't know if it can ever be broken.

''I think Coach McKissick's longevity is due to the fact that he has his priorities in order and that football is not his No. 1 priority. A man must have persistence and love of the game and love of life to coach so long.''

Everything he wants right here.

McKissick's persistence and perseverance were forged from a tough childhood.

Born in Greenwood, S.C., McKissick was the second of Harry and Ethel's three sons. Harry owned the Pepsi and Nehi Bottling Co.

A few months after the 1929 stock market crash, the McKissicks returned home one night to find their house destroyed by a fire. Within months, the bottling plant went bankrupt. The family moved to Lake City, S.C., where McKissick's dad opened a corner grocery that went belly up within two years.

Life got better after his mom got a job as lunchroom supervisor for the public schools in Williamsburg County—she worked there 40 years—and his dad became a guard standing shotgun on the county chain gang. But the tough times didn't stop.

McKissick grew up in homes without toilets and running water. He didn't wear shoes to school until the eighth grade. And the family could afford to eat meat—fried chicken—only on Sundays.

He was drawn to coaching because he recalled how happy his Kingstree High school coach, Jimmy Welch, always looked. ''I figured it must be a good profession.''

In the fall of '51, he landed a job in Clarkton, N.C.—over the phone, sight unseen. Little did he know he'd be coaching six-man football; it paid $2,700 a year. He called Lonnie MacMillian, his coach at Presbyterian College and a pioneer of the Split-T offense, for advice.

''He gave me four plays to run told me to run—them to the right and left, so it would seem like I had eight,'' says McKissick, whose team went 7–0. (None of those victories are included in his 499 wins.)

In the spring of 1952, McKissick applied for the job at Summerville. ''The superintendent, Frank Kirk, later told me I got the job because I was the only applicant who didn't ask how much it paid.''

McKissick coached boys and girls basketball, baseball and track. He taught two South Carolina history classes and three U.S. history classes. And he mowed and lined the football field, shined the football cleats, washed the game uniforms and taped the players' ankles, all for $3,000 a year.

''Growing up poor gave me drive,'' he says. ''I put pressure on myself to try to achieve something in life. I had empathy for kids who had a tough time, especially if they were trying, and compassion for those who lacked confidence.''

McKissick has been approached about college head coaching jobs (The Citadel, Newberry, Presbyterian), but he has never come close to leaving. His wife was a postal carrier for 30 years until she retired in 1986. They raised two daughters here: Debbie and Cindy, a former Green Wave cheerleader.

''People always ask me why I didn't take another job,'' McKissick says. ''I grew up hard, not having everything I wanted. People have different wants and needs. A lot of people want more than what they really need.

''Working with kids has kept me young; it has allowed me to grow and evolve. And I get so much self-satisfaction seeing former players around town, at the filling station, the barbershop. . . . Even as football coaches at area high schools.

''Why would I ever want to leave Summerville? It's a wonderful community, with wonderful fans and great support. It's my family. I have everything I've always wanted right here.''●

REAR ADMIRAL HOWARD KIRK UNRUH, JR.

● Mr. LAUTENBERG. Mr. President, I rise today to formally acknowledge the great accomplishments and recent retirement from the United States Naval Reserve of one of my constituents, Rear Admiral Howard Kirk Unruh, Jr.

Henry Clay said: ''Of all the properties that belong to honorable men, not one is so highly prized as that of character.'' RADM Unruh is, indeed, a man of character and he has shown outstanding character throughout his 33 years of service to the Navy.

Admiral Unruh's naval career began in the Garden State, where he attended Princeton University on a ROTC scholarship. In 1970, upon his graduation from Princeton, Ensign Unruh was commissioned as an officer in the United States Navy.

He reported for duty in Hawaii where he served on the USS Elkhorn AOG–7. As damage control assistant and engineering officer, he accepted a great deal of responsibility for a young man and gained valuable leadership experience. He learned what it meant to serve and what it meant to lead, and he made the Navy an important part of his life.

His work did not go unnoticed, and, after completing a tour of the Western Pacific aboard the Elkhorn, Unruh was selected to participate in Admiral Elmo Zumwalt's Human Resource Management Program in Pearl Harbor.

In 1975, Lieutenant Unruh left active duty, and went on to receive a Masters degree in Education from Harvard University. But the Navy was in his blood. So, while studying in Massachusetts, he accepted a commission in the Naval Reserves and began the second phase of his service.

For the next 28 years, Admiral Unruh served wherever and whenever he was needed. He taught naval management and leadership courses; he mentored officers and sea cadets; he spearheaded successful reorganization efforts in reserve centers; and he participated in joint military training exercises in the U.S. and abroad. In short, as he moved up the ranks, he gave the Navy his wholehearted commitment on land and sea.

In 1995, he took an assignment as the Department of the Navy's duty captain at the Pentagon's Navy Command Center. There, he served under Secretary of the Navy and Chief Naval Operations Admiral Mike Borda and was in charge of monitoring military activity around the world. On his first day on duty, human émigrés flying civilian aircraft over Cuba were shot down by the Cuban military, which believed that the aircraft were intruding in Cuban air space. Captain Unruh acted quickly and admirably, putting together data to brief the President on the United States on what was happening.

Now Kirk Unruh retires as an Admiral and he has well earned that rank. Over the years, his contributions to the Navy have been duly recognized. He is authorized to wear the Legion of Merit, the Meritorious Service Medal which he was awarded twice, the Navy Commendation Medal which he was awarded four times, the National Defense Medal with bronze star, and various other Unit and Service ribbons. These decorations attest to the character of the man, the service he has rendered, and the honor with which he has provided that service.

Today I ask that my colleagues join with me in thanking Admiral Unruh for his years of service, for his commitment to this nation and to the United States Navy, and for a job well done. As noted in his Legion of Merit Citation: ''By his outstanding leadership, commendable innovation, and inspiring dedication to duty, RADM Unruh reflected great credit upon himself and upheld the highest traditions of the United States Naval Service.''

Lastly, behind the career of most great Naval officers is a loving family that is asked to endure the hardships of constant travel and periodic separation. Admiral Unruh's family is no exception. His wife Diane has made many sacrifices to support her husband. And, as the wife of an Admiral—whose children, Meredith, Allison, and Chip were all born on naval bases—she has earned her stripes and unofficially outranks him. We all know that without her sacrifice his service to our Nation would not have been possible.

Today, I join with Diane, her children, and all Americans in saluting Admiral Unruh for an outstanding career and a job well done.●

MEASURE READ THE FIRST TIME

S. 1618. A bill to reauthorize Federal Aviation Administration Programs for the period beginning on October 1, 2003, and ending on March 31, 2004, and for other purposes.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–269. A concurrent resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to a permanent repository for high-level nuclear waste; to the Committee on Environment and Public Works.

HOUSE CONCURRENT RESOLUTION NO. 48

Whereas, over the past four decades, nuclear power has become a significant source for the nation's production of electricity. Michigan is among the majority of states that derive energy from nuclear plants; and

Whereas, since the earliest days of nuclear power, the great dilemma associated with this technology is how to deal with the waste material that is produced. This high-level radioactive waste material demands exceptional care in all facets of its storage and disposal, including the transportation of this material; and

Whereas, in 1982, Congress passed the Nuclear Waste Policy Act of 1982. This legislation requires the federal government, through the Department of Energy, to build a facility for the permanent storage of high-level nuclear waste. This act, which was amended in 1987, includes a specific timetable to identify a suitable location and to establish the waste facility. The costs for this undertaking are to be paid from a fee that is assessed on all nuclear energy produced; and

Whereas, in accordance with the federal act, Michigan electric customers have paid $405.8 million into this federal fund for construction of the federal waste facility; and

Whereas, there are serious concerns that the federal government is not complying with the timetables set forth in federal law. Every delay places our country at greater risk, because the large number of temporary storage sites at nuclear facilities across the country make us vulnerable to potential problems. The events since September 11, 2001, clearly illustrate the urgency of the need to establish a safe and permanent high-level nuclear waste facility as soon as possible. The Department of Energy, working with the Nuclear Regulatory Commission, must not fail to meet its obligation as provided by law. There is too much at stake: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring). That we support the United States Department of Energy and the Nuclear Regulatory Commission in their efforts to fulfill their obligation to establish a permanent repository for high-level nuclear waste; and be it further

Resolved, That copies of this resolution be transmitted to the United States Department of Energy, the Nuclear Regulatory Commission, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–270. A concurrent resolution adopted by the Legislature of the State of Michigan relative to beach grooming on private property; to the Committee on Environment and Public Works.

SENATE CONCURRENT RESOLUTION NO. 26

Whereas, the most effective stewardship of our environment includes both public and private participation. Michigan has recently taken an important step in the direction of caring for our shorelines and beaches with the enactment of legislation permitting shoreline property owners to take certain actions to maintain beaches within specific guidelines; and

Whereas, with the reduction in lake levels, shoreline property has changed dramatically in many areas. In many instances, beaches have been transformed by vegetation, which has led property owners to seek authority to groom the beaches. However, the potential for conflict with the long-term integrity of shore lands and habitat required extensive discussions to develop an effective and responsible strategy; and

Whereas, as a result of the input of individual property owners, local landowner and environmental groups, state officials, and lawmakers, Michigan has enacted legislation, 2003 PA 14 (Enrolled House Bill No. 4257), that will allow property owners to remove vegetation and debris from beaches. These actions are limited in scope and strike a workable balance between legitimate recreational concerns and environmental considerations; and

Whereas, the effective compromise established with regard to maintenance on Michigan beaches will be far more productive than contentiousness between property owners and governmental regulators. This legislation capitalizes on the shared commitment private and public interests have in the quality and the appearances of our beaches: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That we memorialize the Congress of the United States to work with the appropriate federal agencies in adopting guidelines on beach maintenance activities as defined in 2003 PA 14. We also encourage the United States Army Corps of Engineers to work cooperatively with property owners on the stewardship of beaches; and be it further

Resolved, That copies of this resolution be transmitted to the Office of the President of the United States, the Environmental Protection Agency, the United States Army Corps of Engineers, the Office of the Governor, the Michigan Department of Environmental Quality, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–271. A resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to widening and resurfacing of the M 50 to US 12 segment of US 127; to the Committee on Environment and Public Works.

HOUSE RESOLUTION NO. 95

Whereas, the Michigan International Speedway (MIS), which attracts 600,000 visitors annually, is the largest sporting venue in Michigan. Michigan International Speedway has accepted its role as a corporate citizen with pride for the last 35 years; and

Whereas, fifty-five percent of MIS season ticket holders are from outside the state of Michigan, with season ticket holders in 47 states and 12 foreign countries. The indirect economic impact of the Michigan International Speedway to Michigan's economy exceeds $500 million dollars annually. With over 50% of the race weekend business coming from outside the state, a substantial amount of money is brought into Michigan's economy from the surrounding area; and

Whereas, in 2002, a resurfacing project was completed on US 127 from M 50 North to Interstate 94, which has caused a deterioration in the roadway south of M 50 to US 12; and

Whereas, traffic counts escalate annually, averaging 20,000 vehicles per day, and they spike drastically during the three race weekends at Michigan International Speedway; and

Whereas, traffic engineers routinely specify a four-lane highway as mandatory for traffic volumes that exceed 17,500 on a daily basis; and

Whereas, transportation planners project that without any new development, traffic counts along US 127 in Jackson County will range from 31,000 to 51,000 vehicles daily; and

Whereas, the number of vehicle accidents occurring on US 127 is unacceptably high, with an annual average of 311 occurring annually. Of this number, 248 occur on the road segment between M 50 and US 12; and

Whereas, the state of Michigan has recognized the increasing problems associated with traffic pressure on US 127 since 1994, when it was specifically cited in the Michigan Long-Range Plan; and

Whereas, roadway expansion for US 127 in Jackson County has previously been permitted and does not require an environmental impact study; and

Whereas, improvements to US 127 from M 50 to US 12 will both improve community safety and enhance economic development efforts; now, therefore, be it

Resolved by the House of Representatives, That we memorialize Congress to enact legislation to support funding for the widening and resurfacing of the M 50 to US 12 segment of US 127; and

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–272. A concurrent resolution adopted by the Legislature of the State of Texas relative to the Highway Trust Fund and the State of Texas; to the Committee on Environment and Public Works.

HOUSE CONCURRENT RESOLUTION NO. 82

Whereas, an integrated, safe, and adequately financed transportation system is a critical component of the economic, social, and environmental well-being of both the United States and Texas; and

Whereas, the Highway Trust Fund was established by the Highway Revenue Act of 1956 as a mechanism to finance an accelerated highway program, including the Interstate Highway System; the revenues used to finance the trust fund are derived from federal excise taxes on highway motor fuel and certain truck-related taxes collected from motorists in all 50 states and paid into the federal Highway Trust Fund; and

Whereas, federal law requires that the money paid into the trust fund be returned to the states in accordance with legislatively established formulas that are recalculated every six years in reauthorization legislation; most recently the Transportation Equity Act for the 21st Century (TEA–21) was passed in 1998; and

Whereas, due to funding disparities, 26 states, known as highway program donor states, receive less than their fair share of the federal fuel taxes that their citizens have paid into the highway account of the trust fund; from 1956 to 2001, Texas received only an average highway program rate of return of 78 percent on the funds sent to Washington; and

Whereas, currently, the United States Congress is drafting legislation to reauthorize TEA–21, which guaranteed a minimum rate

of return of 90.5 percent on federal highway programs; a coalition of the donor states seeks a guaranteed rate of return of 95 percent of their share of contributions to the federal Highway Trust Fund, calculated against all dollars being distributed to the 50 states; and

Whereas, a 95 percent rate of return would allow Texas to better address its highway construction, repair, and maintenance needs; highway projects enhance mobility, improve air quality, foster economic development, and support thousands of jobs in Texas: Now, therefore, be it

Resolved, that the 78th Legislature of the State of Texas hereby respectfully request the Congress of the United States to provide equity funding to Texas by increasing the state's highway program rate of return from the Highway Trust Fund to 95 percent of Texas' contributions to the fund; and be it further

Resolved, that the Texas secretary of state forward official copies of this resolution to the president of the United States, to the speaker of the house of representatives and the president of the Senate of the United States Congress, and to all the members of the Texas delegation to the Congress with the request that this resolution be officially entered in the Congressional Record as a memorial to the Congress of the United States of America.

POM–273. A concurrent resolution adopted by the Legislature of the State of New Hampshire relative to the Clean Air Act as it pertains to safeguarding public health and protecting environmental quality; to the Committee on Environment and Public Works.

SENATE CONCURRENT RESOLUTION NO. 4

Whereas, Section 111 of the Clean Air Act requires the adoption of federal standards (known as new source review) reflecting the best available control technology for facilities which cause, or contribute significantly to, air pollution which may endanger public health or welfare; and

Whereas, the United States Environmental Protection Agency (USEPA) adopted such standards of performance for the construction or modification of power plants; and

Whereas, the New Hampshire attorney general has alleged and is actively pursuing litigation against upwind power plant owners for violation of new source review here in New Hampshire and out-of-state; and

Whereas, the administration of President Bush is proceeding to implement modifications of the new source review program; and

Whereas, acid rain, which is damaging sensitive ecosystems, including the forests and lakes of New Hampshire. has been particularly attributed to emissions from coal-burning plants upwind of New Hampshire; and

Whereas, scientific research has established a well-defined link between power plant air emissions and human health impacts, including exacerbation of symptoms for those with asthma, increased risk of heart attacks for those with heart disease, causation of lung cancer and premature death; and

Whereas, there remains considerable controversy, uncertainty, and question as to whether the planned changes to new source review will result in continued, increased, or decreased air polluting emissions compared with current or alternative standards: Now therefore, be it

Resolved by the Senate, the House of Representatives concurring, That the general court of New Hampshire urges the President, George W. Bush, and the USEPA Administrator, Christie Whitman, to suspend implementation of modified regulations on new source review pending independent scientific review of their projected impact by the National Academy of Sciences; and

That the general court urges the congressional delegation to take and support appropriate actions against any decision made by the administrator of the USEPA to modify the regulations implementing Section 111 of the Clean Air Act if the result would be to jeopardize New Hampshire's ability to safeguard public health and protect environmental quality, including a suspension of pending modified regulations pending independent scientific review by the National Academy of Sciences; and

That copies of this resolution, signed by the president of the Senate and the speaker of the House of Representatives be forwarded by the senate clerk to President George W. Bush, USEPA Administrator, Christie Whitman,and each member of the New Hampshire congressional delegation.

POM–274. A concurrent resolution adopted by the Legislature of the State of Texas relative to funding for the EPA Border Fund; to the Committee on Environment and Public Works.

HOUSE CONCURRENT RESOLUTION NO. 204

Whereas, the United States and Mexico created the North American Development Bank (NADB) to provide financing for environmental infrastructure projects, particularly those related to water supply, wastewater treatment, and solid waste management along their common border; and

Whereas, since its inception in 1995, NADB has financed 57 environmental infrastructure projects representing $1.4 billion in border region improvements, a substantial return on the bank's $494 million investment; and

Whereas, NADB established the Border Environment Infrastructure Fund (BEIF) in 1997 to receive and administer grants from other institutions, such as the U.S. Environmental Protection Agency (EPA), that can be combined with loans and guaranties to facilitate project financing; and

Whereas, to date, BEIF has received $336 million from EPA's Border Fund, and this contribution is vital to making water and wastewater projects affordable, especially for the smallest and poorest communities; and

Whereas, Congress increased the Border Fund to $75 million in fiscal year 2000, and this level of funding was again recommended for fiscal year 2003; however, the Border Fund received a congressional appropriation of only $50 million; and

Whereas, reductions in the Border Fund and subsequent revenue losses to BEIF seriously undercut NADB's ability to finance water and wastewater infrastructure projects that are essential to environmental quality and the well-being of residents on both sides of the border: Now, therefore, be it

Resolved, That the 78th Legislature of the State of Texas hereby respectfully urge the Congress of the United States to reinstate funding for the EPA Border Fund to $75 million for fiscal year 2004 and to appropriate sufficient funds in subsequent years to address environmental infrastructure needs in the border region; and be it further

Resolved, That the Texas secretary of state forward official copies of this resolution to the President of the United States, to the speaker of the house of representatives and the president of the senate of the United States Congress, and to all the members of the Texas delegation to the congress with the request that this resolution be officially entered in the Congressional Record as a memorial to the Congress of the United States of America.

POM–275. A resolution adopted by the House of Representatives of the Legislature of the State of Florida relative to reinstating the federal income tax deduction for state and local sales taxes paid; to the Committee on Finance.

HOUSE RESOLUTION NO. 9003–C

Whereas, prior to 1986, American taxpayers were allowed to deduct state and local sales taxes paid from their federal income tax liabilities, and

Whereas, the Tax Reform Act of 1986 repealed this deduction while it retained the deductibility of state and local income taxes, and

Whereas, the elimination of the deduction for payment of state and local sales taxes created a fundamental disparity adversely affecting citizens of Florida and six other states that do not levy a personal income tax, and

Whereas, while citizens in the 43 other states continue to deduct state and local income taxes, thereby reducing their federal income tax liability, taxpayers in Florida and six other states have no corresponding tax deduction, and

Whereas, in addition to fostering the inequitable treatment of individual taxpayers, this disparity also has worked against the states whose tax structure has no general individual income tax and relies heavily on sales taxes, and

Whereas, reinstating the deductibility of state and local sales taxes on federal income tax returns could generate substantial benefits for Florida's families and the state's economy, and

Whereas, as a matter of equity and fairness, Floridians and the citizens of other states that finance their budgets without an income tax deserve to benefit from federal income tax deductions comparable to those already enjoyed by the majority of United States taxpayers, and

Whereas, allowing taxpayers to deduct either their state and local income tax or state and local sales taxes paid in a given year would restore equity and fairness across the states, and

Whereas, federal legislation that reinstates the deductibility of state and local sales taxes is currently before the Congress: Now, therefore, be it

Resolved by the House of Representatives of the State of Florida, That the Congress of the United States is respectfully requested to reinstate the federal income tax deduction for state and local sales taxes paid; and be it further

Resolved, That copies of this resolution be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

POM–276. A resolution adopted by the Senate of the General Assembly of the Commonwealth of Pennsylvania relative to Medicare; to the Committee on Finance.

RESOLUTION NO. 210

Whereas, there are 321 Medicare-certified agencies in the Commonwealth of Pennsylvania providing critical care each year in the homes of nearly half a million Pennsylvanians; and

Whereas, home health patients who receive Medicare services are typically the sickest, frailest and most vulnerable group of Pennsylvania's elderly population; and

Whereas, Congress in 1997 sought to cut growth in the Medicare home health benefit by $16.2 billion over five years but resulted in cutting more than $72 billion; and

Whereas, nearly one million fewer Medicare beneficiaries are qualifying for Medicare-reimbursed home care than in 1997; and

Whereas, additional cuts in the Medicare home health benefit would force many low-cost, efficient Pennsylvania agencies that are struggling under the current system to go out of business, thereby harming access to Medicare beneficiaries; and

Whereas, total elimination of the 15% cut has been postponed for the past two years; and

Whereas, the impending 15% cut is making it difficult for home health agencies to secure lines of credit and is discouraging investment in advanced technologies and staff benefits; and

Whereas, sixty-five members of the Untied States Senate have joined in a bipartisan letter that recommends the elimination of the 15% cut; and

Whereas, one hundred and thirteen members of the United States House of Representatives have joined in bipartisan letter that recommends the elimination of the 15% cut; and

Whereas, the Senate Budget Committee has noted to set aside the funds necessary to do away with the 15% cut; and

Whereas, the Medicare Payment Advisory Commission (MedPAC), the group established by Congress to advise it on Medicare policy, has called upon Congress to permanently eliminate the 15% cut in the Medicare home health benefit; and

Whereas, MedPAC has reported that there are three factors that can lead to an increase in cost for rural home health providers: travel, volume of services and lack of sophisticated management and patient care procedures; and

Whereas, Medicare home health services are delivered to a large rural population in Pennsylvania that often live miles apart, thereby increasing the cost of providing home health services in these areas: Therefore be it

Resolved, That the Senate of the Commonwealth of Pennsylvania urge Congress to permanently eliminate the 15% cut in the Medicare home health benefit and extend the 10% rural add-on to Medicare home health providers; and be it further

Resolved, That the Senate of the Commonwealth of Pennsylvania urge the President to support Congress in this effort to eliminate the 15% cut in the Medicare home health benefit and extend the 10% rural add-on to Medicare home health providers; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, the Vice President of the Untied States, the Speaker of the United States House of Representatives and to each member of Congress from Pennsylvania.

POM–277. A concurrent resolution adopted by the Legislature of the State of Texas relative to the portion of the Internal Revenue Code regarding veterans and their families; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 161

Whereas, Texas has long been a leader in recognizing and rewarding the tremendous sacrifices of its veterans; and

Whereas, home ownership is viewed by many as a major component of the American Dream; and

Whereas, enabling veterans to achieve home ownership at a lower cost is but a small reward for their faithful service while in the U.S. Armed Forces; and

Whereas, in appreciation of this service on behalf of our state and nation, the Texas Veterans Land Board has offered below-market interest rates on home loan mortgages to eligible veterans since 1983; and

Whereas, this program has assisted more than 500,000 Texas veterans in obtaining affordable housing and in making a better life for themselves and their dependents; and

Whereas, Texas utilizes federally tax-exempt bonds known as Qualified Veterans Mortgage Bonds to fund approximately 50 percent of all home and improvement loans made to veterans; and

Whereas, current federal law governing the use of tax-exempt bonds used to fund these loans, as contained in Section 143(l)(4) of the Internal Revenue Code of 1986, unfairly limits these programs to only those veterans who served prior to January 1, 1977; and

Whereas, this restriction unfairly prevents all veterans serving on active duty after 1976 from using Qualified Veterans Mortgage Bonds, including more than 500,000 men and women who served in Desert Shield and Desert Storm and the 8,000 reservists and National Guard members of Texas called up to serve our country since September 11, 2001; and

Whereas, these courageous men and women deserve the same benefits offered to their earlier counterparts, yet they and their families are being denied the opportunity to use Qualified Veterans Mortgage Bonds; and

Whereas, Congress has failed to remedy this discriminatory federal provision on behalf of these deserving men and women, despite the fact that it will not increase federal discretionary spending one cent: Now, therefore, be it

Resolved, That the 78th Legislature of the State of Texas hereby respectfully urge the 108th Congress to support legislative action to immediately remove the aforementioned discriminatory portion of the Internal Revenue Code in order that today's veterans and their families might enjoy the same benefits as their earlier counterparts; and be it further

Revolved, That the Texas secretary of state forward official copies of this resolution to the president of the United States, the speaker of the house of representatives, and the president of the senate of the United States Congress, and to all the members of the Texas delegation to Congress with the request that this resolution be officially entered in the CONGRESSIONAL RECORD as a memorial to the Congress of the United States of America.

POM–278. A concurrent resolution adopted by the Legislature of the State of Texas relative to federal income tax deductibility of state and local sales taxes that existed before 1986; to the Committee on Finance.

SENATE CONCURRENT RESOLUTION NO. 1

Whereas, the Tax Reform Act of 1986 eliminated the deductibility of state and local sales taxes paid by federal income tax return filers while it retained the deductibility of state and local income taxes; and

Whereas, although the tax legislation was generally designed to simplify the federal income tax, eliminating the deduction for payment of state and local sales taxes created a fundamental disparity adversely affecting citizens of Texas and eight other states that do not levy a personal income tax; and

Whereas, while citizens in the 41 other states continue to deduct state and local income taxes, thereby reducing their federal income tax liability, taxpayers in Texas and a few other states have no corresponding tax deduction to ease their burden; the net effect of this imbalance is that Texans and citizens of eight other states pay a higher percentage of federal taxes than the majority of American taxpayers; and

Whereas, in addition to fostering the inequitable treatment of individual taxpayers, this disparity also has worked against the states whose tax structure has no general individual income tax and relies heavily on sales taxes; and

Whereas, a report published in March, 2002, by the Comptroller of Public Accounts of the State of Texas estimated that the inability to deduct state and local sales taxes could cost Texans more than $700 million for the 2002 tax year and, if the deductions are not restored, could cost the state more than 16,000 jobs that otherwise would be created with a lower tax burden and an increase in disposal family income; and

Whereas, according to the report, reinstating the deductibility of state and local sales taxes on federal income tax returns could generate substantial benefits for Texas families and the state's economy; and

Whereas, a family of four with an income of $60,000 could get an additional federal income tax deduction of $1,015, and a single mother with one child and an income of $35,000 could deduct an additional $461; and

Whereas, the comptroller of public accounts estimates that the more than $700 million in net tax savings that would stay in Texas could encourage $590 million in new investments within the state and an $874 million increase in the gross state product in 2003; and

Whereas, as a matter of equity and fairness, Texans and the citizens of other states that finance their budgets without an income tax deserved to benefit from federal income tax deductions comparable to those already enjoyed by the majority of United States taxpayers; federal legislation that reinstates the deductibility of state and local sales taxes is currently before the congress: Now, therefore, be it

Resolved, That the 78th Legislature of the State of Texas hereby respectfully request the Congress of the United States to restore the federal income tax deductibility of state and local sales taxes that existed before 1986; and be it further

Resolved, That the Texas secretary of state forward official copies of this resolution to the president of the United States, to the speaker of the house of representatives and the president of the senate of the United States Congress, and to all the members of the Texas delegation to the congress with the request that this resolution be officially entered in the Congressional Record as a memorial to the Congress of the United States of America.

POM–279. A concurrent resolution adopted by the Legislature of the State of Texas relative to block grants to be used for public welfare and Medicaid purposes; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 58

Whereas, State Medicaid spending currently accounts for approximately 22 percent of total state spending; and

Whereas, under the Federal Medical Assistance Percentage, the federal share of state Medicaid spending provided to the State of Texas has decreased by 4.2 percent over the past 10 years; and

Whereas, average monthly Medicaid caseloads in the State of Texas are projected to increase to 2,885,583 by fiscal year 2005 from 2,376,193 in fiscal year 2003; and

Whereas, prescription drug costs are a major factor driving Medicaid expenditures, and annual Medicaid prescription levels in the State of Texas are projected to rise to 40,257,515 by fiscal year 2005, from 33,859,094 in fiscal year 2003; and

Whereas, the Congressional Budget Office projects that Medicaid spending under the current system will more than double by the year 2012; and

Whereas, the growth in federal spending of the Medicaid and welfare entitlements is astronomical and spiraling, significantly increasing the federal budget costs; and

Whereas, this growth will never be controlled unless the State of Texas has autonomous management of the program, free from federal mandates regarding individual entitlement, eligibility groups, benefits, payment rates, and financing structures to allow most citizens of the State of Texas to benefit from the Medicaid and welfare programs; and

Whereas, the State of Texas will be able to design and develop innovative, efficient, and productive medical assistance programs that will meet the needs of the residents within the State of Texas' budget capacity; and

Whereas, in the State of Texas, there exists the possibility to improve patient outcomes and cost-effectiveness with a statewide implementation of consumer-directed care under the state medical assistance program: Now, therefore, be it

Resolved, That the 78th Legislative of the State of Texas hereby respectfully urge the Congress of the United States to enact appropriate legislation to pass federal funds on to states via block grants to be used for public welfare and Medicaid purposes; and be it further

Resolved, That the Texas secretary of state forward official copies of this resolution to the president of the United States, the speaker of the house of representatives and the president of the senate of the United States Congress, the secretary of the United States Department of Health and Human Services and all the members of the Texas delegation to the congress with the request that this resolution be officially entered into the Congressional Record of the United States of America.

POM–280. A concurrent resolution adopted by the Legislature of the State of Texas relative to the medical savings account program; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 90

Whereas, Medical Savings Accounts (MSAs) offer an innovative alternative to high-premium insurance policies by combining tax-free savings accounts and high-deductible catastrophic health insurance plans; and

Whereas, individuals choosing to use these accounts can pay for routine and minor medical services with funds set aside in a tax-free savings account, while major health care costs are covered by their high-deductible health insurance plans; and

Whereas, tax-free MSAs encourage individuals to make wise and economical decisions about their health care because managing their own accounts often makes them more aware of the true costs of health care; MSAs also offer participants greater access to medical services and the freedom to choose their own health care providers; and

Whereas, a survey of MSA plan participants shows that employers offering MSAs to their employees have been able to reduce health insurance expenses by up to 40 percent; in contrast, employers overall have recently experienced an average 16 percent increase in health insurance premiums, with some small employers confronting increases of 40 to 50 percent; and

Whereas, the federal MSA pilot program, which was designed for small employer groups and the self-employed, carries restrictions that may discourage participation in the program and create confusion among potential applicants, employers, and insurance providers; and

Whereas, the federal MSA pilot program limits annual deductibles for participating employees to not less than $1,700 or more than $2,500 for an individual and not less than $3,500 or more than $6,150 for a family; annual out-of-pocket expenses under the plan cannot exceed $3,350 for individual coverage and $6,150 for family coverage; and annual limits for account contributions are 65 percent of the deductible for an individual account and 75 percent of the deductible for a family account; and

Whereas, according to 1996 data, about 85 percent of Americans incurred medical expenses, with an average per-person expenditure of about $2,400, an amount well within the range limits of the MSA annual contribution for an individual account; even more significant is the fact that about half of those persons who incurred medical expenses had expenses of less than $560; and

Whereas, any unspent MSA funds for a given year may be rolled over to the following year; after age 65, unspent funds can be rolled over to an Individual Retirement Account or withdrawn without penalty for any use and taxed as ordinary income; and

Whereas, expanding the availability of MSAs to other employers, increasing the account contribution limits, and lowering the limits on annual deductibles for participating employees would encourage greater participation among consumers, employers, and insurance providers: Now, therefore, be it

Resolved, That the 78th Legislature of the State of Texas hereby respectfully request the Congress of the United States to broaden the scope and availability of the medical savings account program, remove its restrictions, and allow state governments to design such programs for their employees; and be it further

Resolved, That the Texas secretary of state forward official copies of this resolution to the president of the United States, to the speaker of the house of representatives and the president of the senate of the United States Congress, and to all members of the Texas delegation to the congress with the request that this resolution be officially entered in the Congressional Record as a memorial to the Congress of the United States of America.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. STEVENS, from the Committee on Appropriations:

Special Report entitled ''Further Revised Allocation to Subcommittees of Budget Totals for Fiscal Year 2004'' (Rept. No. 108–148).

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. ROCKEFELLER (for himself, Mr. HOLLINGS, Mr. LAUTENBERG, and Mr. NELSON of Florida):

S. 1618. A bill to reauthorize Federal Aviation Administration Programs for the period beginning on October 1, 2003, and ending on March 31, 2004, and for other purposes; read the first time.

By Mrs. MURRAY (for herself and Mr. DEWINE):

S. 1619. A bill to amend the Individuals with Disabilities Education Act to ensure that children with disabilities who are homeless or are wards of the State have access to special education services, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BINGAMAN:

S. 1620. A bill to condition the implementation of assessment procedures in connection with the Head Start National Reporting System on Child Outcomes, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BROWNBACK:

S. 1621. A bill to provide for consumer, educational institution, and library awareness about digital rights management technologies included in the digital media products they purchase, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DASCHLE (for Mr. GRAHAM of Florida (for himself, Mr. HAGEL, Mrs. CLINTON, Mr. NELSON of Nebraska, Ms. MURKOWSKI, Mr. DAYTON, Mr. AKAKA, and Mrs. MURRAY)):

S. 1622. A bill to amend title 10, United States Code, to exempt certain members of the Armed Forces from the requirement to pay subsistence charges while hospitalized; to the Committee on Armed Services.

By Mr. DURBIN:

S. 1623. A bill for relief of Elvira Arellano; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 226. A resolution to authorize representation by the Senate Legal Counsel in the case of Josue Orta Rivera v. Congress of the United States of America, et al; considered and agreed to.

By Mr. BAYH (for himself and Mr. LUGAR):

S. Res. 227. A resolution expressing the profound sorrow of the Senate for the death of Indiana Governor Frank O'Bannon and extending thoughts, prayers, and condolences to his family, friends and loved ones; considered and agreed to.

By Mr. FEINGOLD:

S. Con. Res. 69. A concurrent resolution providing that any agreement relating to trade and investment that is negotiated by the executive branch with other countries must comply with certain minimum standards; to the Committee on Finance.

ADDITIONAL COSPONSORS

S. 242

At the request of Mr. DOMENICI, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 242, a bill to amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and 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. 514

At the request of Mr. BUNNING, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 514, a bill to amend the Internal Revenue Code of 1986 to repeal the 1993 income tax increase on Social Security benefits.

S. 736

At the request of Mr. ENSIGN, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S.

736, a bill to amend the Animal Welfare Act to strengthen enforcement of provisions relating to animal fighting, and for other purposes.

S. 740

At the request of Mr. LIEBERMAN, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 740, a bill to amend title XVIII of the Social Security Act to improve patient access to, and utilization of, the colorectal cancer screening benefit under the medicare program.

S. 767

At the request of Mr. BAYH, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 767, a bill to amend the Internal Revenue Code of 1986 to repeal the increase in the tax on Social Security benefits.

S. 877

At the request of Mr. BURNS, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 877, a bill to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

S. 982

At the request of Mrs. BOXER, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 982, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and hold Syria accountable for its role in the Middle East, and for other purposes.

S. 1213

At the request of Mr. SPECTER, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 1213, a bill to amend title 38, United States Code, to enhance the ability of the Department of Veterans Affairs to improve benefits for Filipino veterans of World War II and survivors of such veterans, and for other purposes.

S. 1353

At the request of Mr. BROWNBACK, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1353, a bill to establish new special immigrant categories.

S. 1479

At the request of Mr. SCHUMER, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1479, a bill to amend and extend the Irish Peace Process and Cultural Training Program Act of 1998.

S. 1554

At the request of Mrs. MURRAY, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1554, a bill to provide for secondary school reform, and for other purposes.

S. 1607

At the request of Mr. GRAHAM of South Carolina, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 1607, a bill to establish a Federal program to provide reinsurance to improve the availability of homeowners' insurance.

S.J. RES. 17

At the request of Mr. CORZINE, his name was added as a cosponsor of S.J. Res. 17, a joint resolution disapproving the rule submitted by the Federal Communications Commission with respect to broadcast media ownership.

S. CON. RES. 21

At the request of Mr. BUNNING, the names of the Senator from Iowa (Mr. GRASSLEY) and the Senator from Nebraska (Mr. HAGEL) were added as cosponsors of S. Con. Res. 21, a concurrent resolution expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other developmental disabilities is at serious risk because of the crisis in recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce.

S. RES. 209

At the request of Mr. JEFFORDS, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. Res. 209, a resolution recognizing and honoring Woodstock, Vermont, native Hiram Powers for his extraordinary and enduring contributions to American sculpture.

S. RES. 219

At the request of Mr. GRAHAM of South Carolina, the names of the Senator from Maine (Ms. COLLINS) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. Res. 219, a resolution to encourage the People's Republic of China to establish a market-based valuation of the yuan and to fulfill its commitments under international trade agreements.

S. RES. 220

At the request of Ms. MURKOWSKI, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. Res. 220, a resolution designating the ninth day of September of each year as ''National Fetal Alcohol Syndrome Awareness Day''.

AMENDMENT NO. 1655

At the request of Mrs. FEINSTEIN, the names of the Senator from South Dakota (Mr. JOHNSON), the Senator from Washington (Mrs. MURRAY), the Senator from New York (Mrs. CLINTON), the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of amendment No. 1655 proposed to H.R. 2754, a bill making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. MURRAY (for herself and Mr. DEWINE):

S. 1619. A bill to amend the individuals with disabilities Education Act to ensure that children with disabilities who are homeless or are wards of the State have access to special education services, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. MURRAY. Mr. President, today I am pleased to join my colleague Senator DEWINE in introducing legislation to provide a high-quality education to homeless and foster children with disabilities. The Individuals with Disabilities Education Act (IDEA) is based on the bedrock American principle of equal opportunity. IDEA recognizes that students have a civil right to a free, appropriate public education, even if their special needs require additional resources. Because most foster and homeless children face distinct challenges, they require even more attention and consideration to make sure their educational needs are met. The Improving Education for Homeless and Foster Children with Disabilities Act would make small but critical changes to ensure these children have a real opportunity to fulfill their potential.

Students with disabilities face additional challenges in school as do foster and homeless children. But to live in a foster home or in no home at all and to have a disability is truly to have the deck stacked against you. Congress has a long and proud tradition of supporting and protecting educational opportunity for our most vulnerable young people. It's what we did when we passed the Elementary and Secondary Education Act in 1965. It's what we did when we created Head Start, and it's what we did when we started giving out Pell Grants. It's time for us to step up once again and make the changes to make IDEA work for homeless and foster children with disabilities.

The bill that Senator DEWINE and I are introducing today addresses the unique educational needs of children with disabilities who are in foster care or who experience homelessness. Foster children and homeless children face a unique set of challenging circumstances. There are over 500,000 children in foster care. Thirty percent of them are in special education. We know that foster children often do not function well in school. Foster children have usually been separated from their biological families as a result of child abuse or neglect, which can leave both emotional and physical marks for life. Given the shortage of foster parents in this country, children in foster care are often shuttled between many different homes and schools. One young man has shared with me his story of living in more than 100 homes throughout his childhood. Every time these children move to a new home, they may have to attend a new school. And every time these children enroll in a new school, they must start over in securing the supports and services they need to receive the free and appropriate public education that is their civil right.

In addition to frequent absences and transfers, foster children often don't

have parents to advocate for their educational needs. Almost every parent whose child has a disability will tell you that their role as advocate for their child correlates directly to the quality of the education their child receives. Without a parent to advocate for them, foster children can languish for years with unrecognized disabilities or insufficient services to help them succeed in school. These experiences can leave children in foster care without the education and support to lead functional, productive lives.

Homeless children in our country also face significant hurdles to succeed in school, which are exacerbated for children with disabilities. The Urban Institute estimates that 1.35 million children experience homelessness each year. A high proportion of homeless children with disabilities also need special education services, yet many homeless children have great difficulty accessing these services.

Children who experience homelessness desperately need stability in their lives, but they often lack the continuity of staying in one school or even in one school district long enough for an Individualized Education Plan—or IEP—to be developed and implemented. In addition, like foster children, some homeless youth have no legal guardian to watch out for their educational needs and to advocate for their best interests.

Despite this difficult situation, we can help these children with a high-quality education. The Improving Education for Homeless and Foster Children with Disabilities Act amends IDEA to help States and districts meet these challenges. It facilitates greater continuity for students who change schools or school districts, by ensuring that students' IEPs follow them from school to school. It increases opportunities for early evaluation and intervention for homeless and foster infants and toddlers with disabilities. It also provides for representation of foster and homeless children on key committees that make critical decisions affecting special education. This bill expands the definition of ''parent'' to include relatives or other caregivers who are equipped to make sound decisions in a child's best interest when there is no biological parent available to do so. Finally, it improves coordination of services and information so educational and social services agencies can function more efficiently to benefit these children.

As we reauthorize IDEA, we have an obligation to pay extra attention to these children and to provide the resources and support they need. The real test of how we treat children in America is measured in how we treat the most vulnerable among us, and this bill gives us a chance to do the right thing. I urge the Senate to truly ensure that no child is left behind by passing the Improving Education for Homeless and Foster Children with Disabilities Act.

By Mr. BINGAMAN:

S. 1620. A bill to condition the implementation of assessment procedures in connection with the Head Start National Reporting System on Child Outcomes, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. BINGAMAN. Mr. President, I rise today to introduce the Head Start Assessment Act of 2003. The purpose of this Act is to ensure that the full-scale implementation of the Head Start National Reporting System takes place after there has been ample opportunity for expert and public commentary on the assessment, Congressional oversight hearings have been held, and the National Academies have completed a study of this issue to ensure that the assessment is reliable and appropriate.

Currently, children in Head Start are assessed 3 times a year on all of the domains of early learning and development, including literacy and math. The National Reporting System (NRS) is an assessment developed by HHS, which would create an additional test for all 4-year olds in Head Start, roughly ½ million children, on literacy and math skills only. Children would be assessed twice a year and according to Administration documents, changes over time in children's scores would be used to judge the success of individual Head Start programs. The new testing program is expected to cost about $20 million each year. Some pilot testing was begun in April and May of 2003 and HHS expects to begin full implementation of the NRS this fall.

The purpose of the bill that I am introducing today is not to undermine this assessment, or to oppose assessment, but to make sure that it is done correctly. As you know, I have a long history of supporting accountability for educational programs. Assessments are important tools for accountability. They can be used to benefit teachers and students and to raise the bar for all educational programs. That being said, a good assessment takes time to develop and the measures and procedures that are used must be thoroughly debated and discussed. I have grave concerns about the speed with which the NRS was developed as well as with the opacity of the process by which HHS has proceeded to date.

Assessing young children is notoriously difficult. They are not used to taking tests and often do not have the emotional maturity to sit still and focus on the task at hand. Their test scores tend to fluctuate across time and can reflect many factors unrelated to their skills. The National Academy of Sciences report, ''Eager to Learn: Educating Our Preschoolers'' made it clear that more research on assessing young children is needed before such assessments should be used for accountability purposes. Because of this, it is crucial that the assessment instruments to be used in the NRS are properly validated and deemed to be appropriate for 4-year old children. At this point, we have little information about exactly what those instruments are and HHS has not made available the results of pilot tests or the comments made by experts on the content of the assessment.

To my mind, the speed with which this assessment was rolled out makes it unlikely that the measures have been properly developed and tested. It has also become clear that the assessment targets only a few of the skills that Head Start seeks to instill in children. For example, social skills are not being assessed and it is clear that without them, children are simply not ready to learn.

It is also very important that sufficient time be taken to insure that English language learners are not put at a disadvantage by being given a test that is not appropriate for them. The test is in English and Spanish, and yet many Head Start children speak Asian or other languages. In my home State of New Mexico, for example, I have heard from Native American Head Start Directors who are concerned that the NRS, in its current form, is not appropriate for their students, who often do not speak English in the home. We should take the time to insure that the assessment tool that is ultimately used is valid and reliable, assesses the gamut of skills that children acquire in Head Start, and is appropriate for children from a wide variety of cultural backgrounds.

It is also crucial that throughout the process of developing these instruments, there is ample consultation both with the public and with experts in early childhood development and research methodology. The results of these consultations and decisions regarding the NRS should be made public. Although HHS claims that they have had many meetings with ''experts'', there is little or no information publicly available that clarifies what went on at these meetings, what decisions were reached, and whether the advice of the experts was or was not heeded in developing the NRS. To date, there has been no Congressional oversight or public task force convened. Development of an assessment tool as important as this one should not occur behind closed doors. Congress and the public have a right to participate in and comment on this process.

My bill would help to insure that the NRS is developed in the proper fashion. The Secretary of HHS would be required to halt the full-scale implementation of the NRS until such time as Congressional oversight hearings have been held, the Secretary has concluded public forums on this issue, and the National Academy of Sciences has conducted a study using a panel of nationally recognized experts in early childhood assessment, child development, and education. The NAS study would provide specific information regarding: a. the skills and competencies that are predictive of school readiness and academic success in young children, b. the

development, selection, and use of instruments to assess literacy, mathematical, emotional and social skills as well as health and physical well-being young children, c. the proper use of early childhood assessments to improve Head Start programs and d. the steps needed to ensure that assessments take into account the racial, cultural, and linguistic diversity of Head Start students, among other things.

I urge my colleagues to support this bill. Head Start is the flagship educational program for low-income children. Studies clearly show that children who attend Head Start programs show gains in their cognitive and social skills, but we also know that more can and should be done for this vulnerable population. Assessments can be an important means to insure that quality is maintained in each Head Start program, but poorly developed or implemented assessments can do more harm than good. Let's take our time, consult with the experts and the public, and come up with a National Reporting System that we can all be proud of.

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. 1620

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 ''Head Start Assessment Act of 2003''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) When used appropriately, valid and reliable assessments can be of positive value for improving instruction and supporting development of young children.

(2) According to the National Academy of Sciences report, Eager to Learn: Educating Our Preschoolers, assessment of children below school age is in ''flux'' and ''all assessments, and particularly assessments for accountability, must be used carefully and appropriately if they are to resolve, and not create, educational problems.''

(3) The Eager to Learn report emphasized that the intended purpose and use of the data to be derived from assessments should be considered in determining which assessment instruments and procedures are most appropriate.

(4) The National Academy of Sciences reports that few early childhood educators and administrators are well-trained in the selection and appropriate use of assessments for young children.

(5) According to the National Academy of Sciences report, From Neurons to Neighborhoods, the emotional and social development of young children is as critical to school readiness as language and cognitive development.

(6) The Head Start Act currently requires programs to assess children in Head Start a minimum of three times a year against certain performance standards, which include all domains of the development and learning of children.

(7) The proposed Head Start National Reporting System on Child Outcomes assessment is not reflective of the full range of skills and competencies that the National Academy of Sciences reports state children require to succeed, and it has not been thoroughly debated by those groups associated with Head Start, including early childhood development and assessment experts, early childhood educators and administrators, family members of children participating in Head Start, or Congress.

SEC. 3. DELAYED IMPLEMENTATION OF ASSESSMENT PROCEDURES IN CONNECTION WITH THE HEAD START NATIONAL REPORTING SYSTEM ON CHILD OUTCOMES.

(a) SATISFACTION OF CONDITIONS.—The Secretary of Health and Human Services shall not proceed with the full-scale implementation of the Head Start National Reporting System on Child Outcomes, as described in the project proposal (68 Fed. Reg. 17815; relating to Implementation of the Head Start National Reporting System on Child Outcomes), until the Secretary certifies to Congress that the following conditions have been satisfied:

(1) OVERSIGHT HEARINGS.—Congressional oversight hearings have been concluded concerning the development and implementation of the Head Start National Reporting System on Child Outcomes.

(2) PUBLIC FORUMS.—The Secretary has concluded, consistent with the requirements of subsection (b), public forums in different regions of the United States, and provided an opportunity for written public comments, concerning early childhood assessment proposals.

(3) STUDY ON EARLY CHILDHOOD ASSESSMENTS.—The Secretary has submitted, consistent with subsection (c), to Congress a study of early childhood assessments focusing on improving accountability, instruction, and the delivery of services. The Secretary shall request the National Academy of Sciences to prepare the study using a panel of nationally recognized experts in early childhood assessment, child development, and education.

(4) AVAILABILITY OF FUNDS.—Without reducing the number of students served by Head Start, sufficient funds are available to—

(A) develop and implement any new Head Start assessments; and

(B) deliver necessary additional technical assistance and professional development required to successfully implement the new assessments.

(b) PUBLIC FORUM PARTICIPATION.—To satisfy the condition specified in subsection (a)(2), the Secretary shall ensure that participation in the required forums includes—

(1) early childhood development and assessment experts;

(2) early childhood educators and administrators; and

(3) family members of children participating in Head Start.

(c) INFORMATION REQUIRED BY STUDY ON EARLY CHILDHOOD ASSESSMENTS.—To satisfy the condition specified in subsection (a)(3), the Secretary shall ensure that the required study contains, at a minimum, specific information regarding the following:

(1) Which skills and competencies are predictive of school readiness and future academic success.

(2) The development, selection, and use of instruments, determined to be reliable and validated for preschoolers, including preschoolers in the Head Start population, to assess the development in young children of—

(A) literacy, language, and mathematical skills;

(B) emotional and social skills; and

(C) health and physical well-being.

(3) The development of appropriate benchmarks and the proper use of early childhood assessments to improve Head Start program effectiveness and instruction.

(4) The resources required for successful implementation of additional assessments within Head Start and how such additional assessments might be coordinated with current processes.

(5) Whether a new assessment would provide information to improve program accountability or instruction that is not already available from existing assessments and reporting procedures within Head Start.

(6) The professional development and personnel needs for successful implementation of early childhood assessments.

(7) The practicality of employing sampling techniques as part of any early childhood assessment.

(8) The practicality of employing observational and work-sampling assessment techniques as part of an early childhood assessment.

(9) Steps needed to ensure that assessments accommodate the racial, cultural, and linguistic diversity of young children, including young children with disabilities.

By Mr. BROWNBACK:

S. 1621. A bill to provide for consumer, educational institution, and library awareness about digital rights management technologies included in the digital media products they purchase, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. BROWNBACK. Mr. President, I rise to introduce the Consumers, Schools, and Libraries Digital Rights Management Act of 2003, legislation I view as vital for American consumers and our Nation's educational community as they venture forth into the 21st century digital media marketplace.

This legislation responds directly to ongoing litigation between the Recording Industry Association of America and Internet service providers Verizon and SBC Communications. This litigation has opened wide all identifying information an ISP maintains on its subscribers, effectively requiring ISPs to make that information available to any party simply requesting the information. The legislation also creates certain minimal protections for consumers legally interacting with digital media products protected by new digital rights management technologies.

I had intended to introduce individual pieces of legislation on these issues—privacy and digital rights management. However, given that both issues are so relevant to consumers in the digital age, I ultimately decided to present them to my colleagues in one comprehensive bill.

It has been determined by a Federal court that a provision of the Digital Millennium Copyright Act permits the RIAA to obtain this ISP subscriber's identifying information without any judicial supervision, or any due process for the subscriber. Today, right now, solely due to this court decision, all that is required for a person to obtain the name and address of an individual who can only be identified by their Intent Protocol address—their Internet phone number—is to claim to be a copyright owner, file a one page subpoena request with a clerk of the court,

a declaration swearing that you truly believe an ISP's subscriber is pirating your copyright, the clerk will then send the request to the ISP, and the ISP has no choice but to divulge the identifying information of the subscriber—name, address, phone number—to the complaining party. There are no checks, no balances, and the alleged pirate has no opportunity to defend themselves. My colleagues, this issue is about privacy not piracy.

The real harm here is that nothing in this quasi-subpoena process prevents someone other than a digital media owner—say a stalker, a pedophile, a telemarketer or even a spammer from using this quasi-subpoena process to gain the identity of Internet subscribers, including our children. In fact, we cannot even limit this subpoena process to mainstream copyright owners.

This past July, SBC Communications received a subpoena request for the personal information of approximately 60 of its Internet subscribers. The copyright owner that made the request is a hard core pornographer named Titan Media. We cannot permit the continued existence of a private subpoena that can be used by pornographers to easily identify Americans. If you have any doubt, all you need to do is look into the generous amnesty program offered by Titan Media to those it accuses of piracy: buy their porn, and they won't use the subpoena to identify you. The threat of abuse is simply too great, as Titan Media has already demonstrated.

The Consumers, Schools, and Libraries Digital Rights Management Awareness Act of 2003 requires the owners of digital media products to file an actual case in a court of law in order to obtain the identifying information of an ISP subscriber. This will provide immediate privacy protections to Internet subscribers by forcing their accusers to appear publicly in a court of law, where those with illicit intentions will not tread, and provides the accused with due process required to properly defend themselves.

In addition, the bill requires the Federal Trade Commission to study alternative means to this subpoena process, so that we may empower our Nation's intellectual property owners to defend their rights by pursuing those who are stealing from them, but to do so in a safe, private, confidential manner where consumers are concerned, and without burdening the courts. Transitioning to an FTC process will ensure that there can be speedy verification, due process, safety, and maximum protection for the innocent, while preserving maximum civil enforcement against pirates.

I do not offer this legislation to debate the history and merits of the DMCA. I offer this legislation for my colleagues consideration, because I find it untenable that any Internet subscribers' identifying information can be obtained, under government auspices no less, without any oversight or due process.

I want to be celar on an important point. This subpoena is mostly being sought by mainstream digital media owners who are seeking to prevent piracy performed using peer to peer file sharing software. While I am as disappointed as anyone that the mighty RIAA would choose to force a little 12-year-old girl—one of the Internet subscribers identified through an RIAA subpoena—and her mother to pay them $2000 for the girl's piracy, I am still opposed to piracy as much as any Member of Congress. I have a strong record on property rights to back that up. I have no interest in seeking to shield those who have committed piracy from the law or hamper the ability of property owners to defend their rights. My concern with this quasi-subpoena process is with the problems it creates. I have made it very clear to all stakeholders that I stand ready to work on alternative legislation if they perefer something else to this provision, but unfortunately that offer has been flatly rejected.

This week the Senate voted to reverse the Federal Communications Commission's new media ownership regulations. I opposed that resolution, because I do not believe the FCC's amendments to its media outlet ownership rules are a threat to competition and diversity. However, I do stand with my colleagues in supporting a media marketplace where information flows from numerous sources and our constituents are empowered by a full range of robust digital outlets and new digital technologies available to them in the 21st century media marketplace. While well intentioned, I believe my colleagues are simply focusing on the wrong issues in the current debate over media ownership.

Digital rights management, otherwise known simply as DRM, refers to the growing body of technology—software and hardware—that controls access to and use of information, including the ability of individuals to distribute that information over the Internet. Over the past few years the large media companies have persistently sought out new laws and regulations that would mandate DRM in the marketplace, denying consumers and the educational community the use of media products as has been customarily and legally permitted.

As a result, the Consumers, Schools, and Libraries Digital Rights Management Awareness Act of 2003 will preclude the FCC from mandating that consumer electronics, computer hardware, telecommunications networks, and any other technology that facilitates the use of digital media products, such as movies, music, or software, be built to respond to particular digital rights management technologies.

Consumers and the educational community are legally permitted to use media products in a host of ways. Some of these uses are specifically identified in the Copyright Act as limitations on the rights of copyright owners. Many of these uses are the result of court decisions interpreting one of those limitations, the limitation known as Fair Use, and customs based on those court decisions. As a result, consumers can record cable and broadcast programming for non-commercial, private home use. They can lend DVDs and CDs to friends and family. They can make copies of movies and music in different formats so that they can use them with different types of playback devices. Media products can be used for criticism, research, and a range of other educational purposes that include acts of redistribution. All of these uses of content can be made by consumers and the educational community under the Copyright Act, and none of them require the permission of the copyright owner.

The same digital marketplace that has given rise to DRM is also updating the ways consumers and the educational community may use media products in powerful new ways. Broadband connectivity and new digital networking technologies—used in homes, offices, schools, and libraries—raise the prospect of never having to use physical media again. Instead, consumers, employees, students, and library patrons could access legally owned and legally possessed media products that reside on such a network remotely, via the Internet. These developments could revolutionize the information age at its onset.

Digital rights management can both help and hinder this evolutionary process. DRM can be a powerful tool for combating digital piracy. It can tether digital content to specific devices, preventing that content from being used on other devices. DRM can also prohibit Internet redistribution of digital media products.

DRM also has its downside, especially when it is incorporated into digital media products, and purchased unwittingly by consumers. Some consumers have already become acquainted with DRM in the marketplace this way. Less than 2 years ago music labels began selling copy-protected CDs. Consumers came to find their CDs—that look just like the CDs they have been purchasing for years—would not play on many personal computers, and in some instances became lodged inside them. In addition, they could no longer make the legal practice of converting them into digital MP3 files for use on portable MP3 players. More recently, consumers purchasing the popular tax filing software, Turbo Tax, came to realize they could only use the software on the first computer they downloaded it onto, never mind situations where they desperately needed to complete their tax filings on a different computer. I have no doubt that came as a nice surprise to taxpayers pressing to meet filing deadlines. It is my understanding that many consumers are registering their view on this use of DRM by purchasing competing software not so limited.

When combined with government mandates requiring that all consumer appliances use or respond to specific DRM technologies and capabilities, the potential for mass consumer confusion and disservice is clear. I introduce this legislation today, because DRM mandates sought by the major media companies are threatening to create just such an experience for consumers and the educational community. I can think of no greater threat to media and information diversity and competition than large, vertically integrated media and Internet companies using DRM technology mandates to not only control distribution of content, but also the ways in which that content is used by consumers in the privacy of their homes, by teachers in our Nation's classrooms and educational institutions, and by all Americans in our libraries.

Last week, the Federal Communications Commission adopted regulations approving a private sector agreement between the cable TV industry and the consumer electronics industry, called the Cable-CE ''Plug and Play'' agreement. The Plug and Play agreement governs how consumer electronics devices, information technology, and cable TV networks work together. Both the cable TV and CE industries should be commended for working together to make digital TV sets ''cable ready,'' and speeding the transition to digital television for consumers.

This private agreement includes digital rights management provisions—called ''encoding rules—that are aimed at protecting cable TV programming from piracy, but in a manner that seeks to preserve the customary and legal uses of media by consumers and the educational community to the greatest degree possible.

The agreement is technology neutral, in that new DRM content protection technologies may be devised and deemed compliant with the security protocols of the Plug and Play agreement. A proponent of a new content protection technology has a right to appeal to the FCC if Cable Labs rejects that technology, and the FCC will conduct a de novo review based on objective criteria. Unfortunately, the Commission may take a very different approach in protection broadcast digital television programming from piracy in its ''Broadcast Flag'' proceeding, as first proposed by the big media companies, and later joined by a very select group of electronics companies that own the patent in the one DRM technology, 5C approved for use in the proposal. The broadcast flag proposal requires every device that receives digital television content to recognize a ''flag'' that can be attached to DTV programming, and to respond to the flag by encrypting the content using an ''authorized technology'' that would be expressly required by FCC regulation.

Unlike the Plug and plan agreement, the broadcast flag proposal makes it difficult for new DRM technologies to be deemed ''Broadcast Flag'' compliant. The principal approval role for alternate DRM content protection technologies is vested in several big media companies and some of the narrow group of electronics companies owning the patent in 5C. In the only circumstance under this proposal where the FCC would have a role in approving a new technology, the baseline for FCC consideration would be the preordained 5C technology and their associated license terms. I hardly consider a proposal to be technology neutral when such important competitive determinations are placed in the hands of invested stakeholders as gatekeepers. Such a proposal deprives the market place of the very qualities the media companies need to fight piracy: competition and innovation. I commend Intel, one of the 5C companies, for recognizing this grim reality and being bold enough to support a different course, as I will outline in a moment.

The important of technological neutrality in the Plug and Play agreement versus the tech mandate in the Broadcast Flag becomes very clear when you review the particular provisions of each agreement.

In today's world, a DRM technology does not seem to exist that can both permit consumers to use the Internet to legally access content stored in their homes—on a home network for instance—while also preventing the unfettered Internet redistribution of such content. However, because the Cable-CE agreement envisions new DRM technologies, and make it possible for them to be approved for use with cable networks and CE devices, the potential for a new DRM technology that can strike this important balance exists.

Since the Flag proposal is so closed off to new technologies, it is unlikely that it will evolve to permit point-to-point redistribution of digital broadcast content over the Internet, for example, from one's home to one's office or from a son or daughter to any elderly parent. Furthermore 5C is capable of completely locking down the ways consumers and the educational community can record or otherwise use DTV content. It is no wonder then that the technical specifications for the actual Flag itself in major media's proposal provides for the possibility that it can be used to send new, more restrictive encoding rules to consumer electronics devices that operate DTV content.

The Consumers, Schools, and Libraries Digital Rights Management Awareness Act of 2003 will ensure that anti-piracy policies for broadcast DTV will provide maximum protections for industry, but in a manner that relies on innovation, competition, and serving the interests of consumers to achieve that goal.

First, the bill prohibits the Federal Communications Commission from moving forward with any new proceedings that impact the ways in which consumers may access or distribute digital media products, aside from the two previously mentioned proceedings. This will negate any future efforts by the big media companies to further expand the ways in which they can control how content may be legally used.

Second, the bill sets ground rules for the FCC's broadcast flag proceeding. It permits the FCC, if it has such authority, to require consumer electronics companies to detect a Broadcast Flag and prohibit illegal Internet retransmission of digital broadcast programming to the public when it detects the flag. However, this proposal relies on a self-certification requirement, so consumer electronics and information technology companies can deploy competing and innovative DRMs that prohibit DTV piracy immediately, not subject to the whims of industry gatekeepers. Like the Plug and Play agreement this proposal provides a meaningful role for the FCC, not industry stakeholders, to resolve any controversies that may arise with new technologies.

In addition to addressing the threat of FCC tech mandates in the broadcast DTV space, this legislation also addresses other important concerns regarding the introduction of DRM into the marketplace, to prevent some of the experiences of consumers with this important technology to date.

First, the bill provides on year for all stakeholders in the digital media marketplace to voluntarily devise a labeling regime for all DRM-enabled digital media products, including those made available solely online, so consumers will know what they are buying when they but it.

Second, the bill prohibits the use of DRM technologies to prevent consumers from reselling the used digital media products they no longer want, or from donating used digital media products to schools and libraries.

Finally, the bill directs the Federal Trade Commission—our Nation's premier consumer protection agency—to carefully monitor the introduction of DRM into the marketplace, reporting to Congress in incidents of consumer confusion and dissatisfaction, and suggesting measures that can ease the impact DRM has on law abiding consumers.

The Senate has responded to what many view as the threat of increasing consolidation in the media marketplace. If my colleagues are concerned with consolidation in outlet ownership then I have no doubt they will be equally concerned with Federally-mandated controls over how consumers and the educational community may actually use information flowing through those outlets. Piracy Prevention is a goal we can all work together to pursue. DRM-mandated business models, however, should not be the product of this Congress or any agency under our jurisdiction. The Federal Communications Commission seems to be missing this point. I encourage all of my colleagues to work with me to put the

brakes on the FCC. Support the Consumers, Schools, and Libraries Digital Rights Management Awareness of 2003.

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:

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 ''Consumers, Schools, and Libraries Digital Rights Management Awareness Act of 2003''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) It is not in the interest of our nation's economy, marketplace innovation, nor consumer or educational community welfare for an agency of the Federal government to mandate the inclusion of access or redistribution control technologies used with digital media products into consumer electronics products, computer products, or telecommunications and advanced services network facilities and services, except pursuant to a grant of specific and clear authority from Congress to assure a result in its regulations, and when the mandate is derived from voluntary private-sector efforts that protect the legal, reasonable, and customary practices of end-users.

(2) The limited introduction into commerce of access controlled compact discs has caused some consumer, educational institution, and library confusion and inconvenience, and has placed increased burdens on retailers, consumer electronics manufacturers, and personal computer manufacturers responding to consumer, educational institution, and library complaints.

(3) The private and public sectors should work together to prevent future consumer, educational institution, library, and industry confusion and inconvenience as legitimate access and redistribution control technologies become increasingly prevalent in the marketplace.

(4) The private sector should make every effort, in a voluntary process, to provide for consumer, educational institution, and library awareness and satisfaction as access and redistribution control technology are increasingly deployed in the marketplace.

(5) The Federal Trade Commission, in the absence of successful private sector efforts, should ensure that consumers, educational institutions, and libraries are provided with adequate information with respect to the existence of access and redistribution control technologies in the digital media products they purchase, and how such technologies may implicate their ability to use such products.

(6) It is not in the interests of consumer welfare, privacy, and safety, or for the continued development of the Internet as a communications and economic resource, for the manufacturers of digital media products or their representatives to be permitted to require Internet access service providers merely providing subscribers with transport for electronic communications to disclose a subscriber's personal information, absent due process and independent of the judicial scrutiny required to ensure that such requests are legitimate.

(7) The Federal Trade Commission should ensure that consumers' welfare, privacy, and safety are protected in regards to requests by manufacturers of digital media products or their representatives for Internet service provider disclosure of subscribers' personally identifiable information outside of the judicial process.

(8) It is not in the interests of our nation's economy, marketplace innovation, nor consumer, educational institution, and library welfare to permit the advent of access or redistribution control technologies to limit the existence of legitimate secondary markets for digital media products, a traditional form of commerce that is founded in our nation's economic traditions, provides critical resources for our nation's educational institutions and libraries, and is otherwise consistent with applicable law.

SEC. 3. PROHIBITION ON FCC TECHNOLOGY MANDATES.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) a successful transition to digital television will occur based on the mutual cooperation of all stakeholders, and no one stakeholder's property interests outweigh another's interests;

(2) the transition to digital television will be successful to the degree it meets consumers' expectations based on the ways they have come to expect to be able to receive and use over-the-air television in the privacy of their own homes and otherwise;

(3) digital convergence provides new tools for industry to offer innovative and varied products compared to the traditional analog marketplace, and it also provides. consumers with innovative and varied means of using digital content. In this respect, interoperability between digital television products and digital cable systems remains an important objective;

(4) a successful transition to digital television will maintain this important balance of interests; and

(5) suggestions that consumers do not have certain expectations in the digital marketplace simply because they have never had access to a particular digital capability, or the expectation of using or relying on such a capability, are not dispositive of reasonable and customary consumer access and use practices.

(b) PROHIBITION ON TECHNOLOGY MANDATES.—Except as specifically authorized by Congress the Federal Communications Commission may not require a person manufacturing, importing into, offering for sale, license or distribution in, or affecting, interstate commerce in the United States a device, machine, or process that is designed, manufactured, marketed for the purpose of, or that is capable of rendering, processing, transmitting, receiving or reproducing a digital media product—

(1) to incorporate access control technology, or the ability to respond to such technology, into the design of such a device, machine, or process; or

(2) to incorporate redistribution control technology, or the ability to respond to such technology, into the design of such a device, machine, or process.

(c) EFFECT ON PENDING FCC RULEMAKING PROCEEDINGS.—

(1) Nothing herein shall prohibit or limit the Commission from issuing the regulations proposed for adoption in the ''cable plug and play'' proceeding in CS Docket No. 97–80 and PP Docket No. 00–67.

(2) If the Commission determines that it has the authority to issue regulations in MB Docket No. 02–230, it shall not be barred by subsection (b) of this section from issuing such regulations, provided, however, that such regulations shall—

(A) preserve reasonable and customary consumer, educational institution, and library access and use practices;

(B) not include, directly or indirectly, any requirement that a device, machine, or process designed, manufactured, marketed for the purpose of, or that is capable of rendering, processing, transmitting, receiving or reproducing a digital media product, be manufactured using any particular redistribution control technology or technologies, but only may provide for establishment of objective standards to achieve a functional requirement of preventing illegal redistribution of digital terrestrial television broadcast programming to the public over the Internet; and

(C) provide for manufacturer self-certification, to be enforced exclusively by the Commission pursuant to its existing enforcement authority, that a redistribution control technology meets the requirements in subparagraphs (A) and (B) of this subsection and does not interfere with unrelated distribution of content over the Internet.

SEC. 4. CONSUMER, EDUCATIONAL INSTITUTION, AND LIBRARY AWARENESS.

(a) CONSUMER, EDUCATIONAL INSTITUTION, AND LIBRARY DIGITAL RIGHTS MANAGEMENT AWARENESS ADVISORY COMMITTEE.—The Federal Trade Commission shall, as soon as practicable after the date of enactment of this Act, establish an advisory committee for the purpose of informing the Commission about the ways in which access control technology and redistribution control technology may affect consumer, educational institution, and library use of digital media products based on their legal and customary uses of such products, and how consumer, educational institution, and library awareness about the existence of such technologies in the digital media products they purchase or otherwise come to legally own may be achieved.

(b) ADVISORY COMMITTEE REQUIREMENTS.—In establishing an advisory committee for purposes of subsection (a) of this section, the Commission shall—

(1) ensure that it includes representatives of radio and television broadcasters, television programming producers, producers of motion pictures, producers of sound recordings, publishers of literary works, producers of video games, cable operators, satellite operators, consumer electronics manufacturers, computer manufacturers, any other appropriate manufacturers of electronic devices capable of utilizing digital media products, telecommunications service providers, advanced service providers, Internet service providers, consumer interest groups, representatives of educational institutions, representatives of libraries, and other interested individuals from the private sector, and is fairly balanced in terms of political affiliation, the points of view represented, and the functions to be performed by the committee; and

(2) provide to the committee such staff and resources as may be necessary to permit it to perform its functions efficiently and promptly; and

(3) require the committee to submit a final report, approved by a majority of members, of its recommendations within one year after the date of the appointment of the initial members.

(c) FTC NOTICE AND LABELING.—Except as provided in subsection (d)—

(1) no person shall offer for sale, license, or use by a consumer, educational institution, or a library an access controlled digital media product or a redistribution controlled digital media product, unless that person has provided clear and conspicuous notice or a label on the product, at the point of sale or distribution to such consumer, educational institution or library as prescribed by the Federal Trade Commission, such that the notice or label identifies any restrictions the access control technology or redistribution control technology used in or with that digital media product is intended or reasonably could be foreseen to have on the consumers', educational institutions', or libraries' use of the product; and

(2) this subsection shall not apply to a distributor or vendor of a digital media product unless such distributor or vendor has actual knowledge that the product contains or is restricted by access control technology or redistribution control technology and that the notice or label described in this subsection is not visible to the consumer, educational institution, or library at the point of distribution or transmission.

(d) APPLICABILITY AND EFFECTIVE DATE.—Subsection (c) shall take effect 1 year after the date of enactment of this Act unless the Commission determines, in consultation with the advisory committee created in subsection (b) of this section, that manufacturers of digital media products have, by such date—

(1) established voluntary rules for notice and labeling of access controlled or redistribution controlled digital media products, including when both access control technology and redistribution control technology are used in or with digital media products, designed to create consumer, educational institution, and library awareness about the ways in which access control technology or redistribution control technology will affect their legal, expected, and customary uses of digital media products; and

(2) agreed voluntarily to implement the rules for notice and labeling of access controlled digital media products or redistribution controlled digital media products, including when both access control technology and redistribution control technology are used in or with digital media products.

SEC. 5. CONSUMER PRIVACY.

(a) IN GENERAL.—Notwithstanding any other provision of law, an Internet access service may not be compelled to make available to a manufacturer of a digital media product or its representative the identity or personal information of a subscriber or user of its service for use in enforcing the manufacturer's rights relating to use of such product on the basis of a subpoena or order issued at the request of the manufacturer or its representative except under a valid subpoena or court order issued at the request of the manufacturer or its representative in a pending civil lawsuit or as otherwise expressly authorized under the Federal Rules of Civil Procedure or the civil procedure rules of a State.

(b) Subsection (a) shall not apply to requests for personal information authorized by another provision of law relating to allegedly unlawful use of a digital media product residing, and not merely stored for a temporary or transient period, on the system or network of the Internet access service.

SEC. 6. SECONDARY MARKETS FOR USED DIGITAL MEDIA PRODUCTS.

(a) CONSUMER SECONDARY MARKETS.—The lawful owner of a digital media product may transmit a copy of that product by means of a transmission to a single recipient as long as the technology used by that person to transmit the copy automatically deletes the digital media product contemporaneously with transmitting the copy.

(b) SECONDARY MARKETS FOR CHARITABLE DONATIONS TO EDUCATIONAL INSTITUTIONS AND LIBRARIES.—A person manufacturing, importing into, or offering for sale in, or affecting, interstate commerce in the United States a digital media product may not incorporate, impose, or attempt to impose any access control technology or redistribution control technology used in or with a digital media product that prevents a consumer from donating digital media products they own to educational institutions or libraries, subject to subsection (a).

(c) NO DISABLING TECHNOLOGY.—A person manufacturing, importing into, or offering for sale in, or affecting, interstate commerce in the United States a digital media product may not incorporate, impose, or attempt to impose any access control technology or redistribution control technology used in or with a digital media product that limits consumer resale of a digital media product described in subsection (a) or charitable donations described in subsection (b) to specific venues or distribution channels.

SEC. 7. REPORT TO CONGRESS.

Not later than 2 years after the date of enactment of this Act, the Federal Trade Commission shall submit to Congress a report containing the following information:

(1) The extent to which access controlled digital media products and redistribution controlled digital media products have entered the market over the preceding 2 years.

(2) The extent to which such digital media products allow consumers, educational institutions, and libraries to engage in all lawful uses of the product, and to which the Commission has received complaints from consumers, educational institutions, and libraries about the implementation of return policies for consumers, schools, and libraries who find that an access controlled digital media product or a redistribution controlled digital media product does not operate properly in a device capable of utilizing the product, or cannot be transmitted lawfully over the Internet.

(3) The extent to which manufacturers and retailers have been burdened by consumer, educational institutions, and library returns of devices unable to play or otherwise utilize access controlled digital media products or redistribution controlled digital media products.

(4) The number of enforcement actions taken by the Commission under this Act.

(5) The number of convictions or settlements achieved as a result of those enforcement actions.

(6) The number of requests Internet service providers have received from manufacturers of digital media products or their representatives seeking disclosure of subscribers' personal information, and the number of electronic requests Internet Service Providers have received from manufacturers of digital media products or their representatives requesting that a subscriber be disconnected from their service outside of any judicial process.

(7) Legislative or other requirements the Commission recommends in creating an office within the Commission to receive, verify, and process requests from manufacturers of digital media companies or their representatives to obtain the personal information of a subscriber to an Internet access service they legitimately suspect of misusing their property.

(8) An analysis of the ways consumers, educational institutions, and libraries commonly expect to be able to use digital media products, whether including access control technology or redistribution control technology or otherwise, when they purchase, legally own, or pay to use such products.

(9) Any proposed changes to this Act the Commission believes would enhance enforcement, eliminate consumer, educational institution, and library confusion, or otherwise address concerns raised by end-users with the Commission under this Act.

SEC. 8. ENFORCEMENT.

(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—Except with regard to section 3, this Act shall be enforced by the Federal Trade Commission.

(b) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.—The violation of any provision is an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(c) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating sections 4, 5 or 6 of this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of sections 4, 5 or 6 is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner as if all applicable terms and provisions of the Federal Trade Commission Act were in incorporated into and made a part of those sections.

(d) 1 YEAR WINDOW FOR COMPLIANCE.—The Commission may not, less than 1 year after the date of enactment of this section, initiate an enforcement action under this section for a violation of section 4.

SEC. 9. DEFINITIONS.

For the purposes of this Act:

(1) ACCESS CONTROLLED DIGITAL MEDIA PRODUCT.—The term ''access controlled digital media product'' means a digital media product, as defined in this section, to which an access control technology has been applied.

(2) ACCESS CONTROL TECHNOLOGY.—The term ''access control technology'' means a technology or process that controls or inhibits the use, reproduction, display, transmission or resale, or transfer of control of a license to use, of a digital media product.

(3) DIGITAL MEDIA PRODUCT.—The term ''digital media product'' means—

(a) a literary work;

(b) a pictorial and graphic work;

(c) a motion picture or other audiovisual work;

(d) a sound recording; or

(e) a musical work, including accompanying words that is distributed, broadcast, transmitted, performed, intended for sale, or licensed on nonnegotiable terms, to the general public, in digital form, either electronically or fixed in a physical medium.

(4) FUNCTIONAL REQUIREMENT.—The term ''functional requirement'' means any rule or regulation enacted by the Federal Communications Commission that requires a device, machine, or process designed, manufactured, marketed for the purpose of, or that is capable of rendering, processing, transmitting, receiving or reproducing a digital media product to be able to perform certain functions or include certain generic capabilities, independent of any requirement that specific technologies be incorporated to meet the functional requirement.

(5) INTERNET.—The term ''Internet'' has the meaning given that term in the Internet Tax Freedom Act (47 U.S.C. 151 nt).

(6) INTERNET ACCESS SERVICE.—The term ''Internet access service'' has the same meaning given that term in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 231(e)(4)).

(7) MANUFACTURER.—The term ''manufacturer of a digital media product'' means any person owning any right in the digital media product.

(8) PERSONAL INFORMATION.—The term ''personal information'' has the same meaning given that term in section 1301(8) of the Children's Online Privacy Protection Act of 1998 (15 U.S.C. 6501(8)), including any other information about an individual, and including information that an Internet access service collects and combines with an identifier described in subparagraphs (A) through (F) of that section.

(9) REDISTRIBUTION CONTROLLED DIGITAL MEDIA PRODUCT.—The term ''redistribution

controlled digital media product'' means a digital media product, as defined in this section, to which a redistribution control technology has been applied.

(10) REDISTRIBUTION CONTROL TECHNOLOGY.—The term ''redistribution control technology'' means a technology or process that controls or inhibits the transmission of a digital media product over the Internet following its initial receipt by a member of the public, without regard to whether such transmission is for the purpose of use, reproduction, performance, resale, or transfer of a license to use, the digital media product.

By Mr. DASCHLE (for Mr. GRAHAM of Florida (for himself, Mr. HAGEL, Mrs. CLINTON, Mr. NELSON of Nebraska, Ms. MURKOWSKI, Mr. DAYTON, Mr. AKAKA, and Mrs. MURRAY)):

S. 1622. A bill to amend title 10, United States Code, to exempt certain members of the Armed Forces from the requirement to pay subsistence charges while hospitalized; to the Committee on Armed Services.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. GRAHAM. Mr. President, Senators HAGEL, CLINTON, BEN NELSON, MURKOWSKI, DAYTON, MURRAY, AKAKA, and I are introducing legislation to help service members who are injured or become ill while serving in combat. Today, if one of our soldiers, sailors, airmen, or marines fighting in Iraq or in Afghanistan are wounded or suffer an illness, they are evacuated to a military hospital. The problem is when they are discharged from the hospital they are given a bill for the meals they were served while being treated.

Under current law, service members are required to pay for their meals at a rate of $8.10 per day while they are in a military hospital. For example, a Marine Staff Sergeant recently spent 26 days in the hospital recovering from injuries endured when an Iraqi child dropped a hand grenade in the HUMVEE he was driving. Upon his discharge from the hospital, he was handed a bill for $243 for his meals. While eight dollars a day may not seem like a lot of money to you or me, it is to a private who makes less than $14,000 a year. If we are looking to save money, we should not turn first to the pockets of our injured service members.

The bill we introduce today is simple. It will prohibit the Department of Defense from charging troops for meals when they are hospitalized as a result of either injury or illness while in combat or training for combat. This legislation shows strong support for our service members currently in harm's way and helps to alleviate a financial burden on our injured soldiers.

This bill is similar to one filed by Congressman BILL YOUNG in the House of Representatives, but also covers those who become ill while in combat or training for combat. We already know that over 100 soldiers deployed to the Persian Gulf region and Central Asia have contracted pneumonia, 30 that become so ill that they had to be evacuated to hospitals in Europe or the United States. This situation highlights why we must include those who suffer from illness as well as injury. I am grateful to Congressman YOUNG for his leadership on this issue and am hopeful we can work together to quickly pass legislation to end the unfair practice of charging our injured service members for hospital meals.

The cost to the government for correcting this serious injustice is significant. This year, the Department of Defense has recouped only $1.5 million for hospital meals from hospitalized service members world-wide. This legislation is even more limited in scope, as it only applies to those who become ill or injured during combat or situations simulating combat. While I am cognizant of the budget constraints our military is facing, this is a comparatively small expense that will mean a great deal to those service members affected.

Service members and military families are facing many challenges right now. They have to contend with long separations, potential financial hardships from extended Reserve and Guard call-ups, not to mention the very real fear of being wounded in combat. We should not add to these burdens by charging them for their meals after a lengthy hospital stay for a combat-related condition.

I urge my colleagues to join me and my colleagues in quickly moving this legislation.

I ask unanimous consent that the text of the bill, the following editorial in support of ending this injustice from the Omaha World Herald, entitled ''Nickel and Diming the Troops'' be printed in the RECORD.

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

S. 1622

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

SECTION 1. EXEMPTION OF CERTAIN MEMBERS OF THE ARMED FORCES FROM REQUIREMENT TO PAY SUBSISTENCE CHARGES WHILE HOSPITALIZED.

(a) IN GENERAL.—Section 1075 of title 10, United States Code, is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''When''; and

(2) by striking the second sentence and inserting the following:

''(b) EXCEPTIONS.—Subsection (a) shall not apply to any of the following:

''(1) An enlisted member, or former enlisted member, of a uniformed service who is entitled to retired or retainer pay or equivalent pay.

''(2) An officer or former officer of a uniformed service, or an enlisted member or former enlisted member of a uniformed service not described in paragraph (1), who is hospitalized under section 1074 of this title because of an injury or disease incurred (as determined under criteria prescribed by the Secretary of Defense)—

''(A) as a direct result of armed conflict;

''(B) while engaged in hazardous service;

''(C) in the performance of duty under conditions simulating war; or

''(D) through an instrumentality of war.''.

(b) EFFECTIVE DATE.—Section 1075(b) of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act, and shall apply with respect to injuries or diseases incurred on or after that date.

[From the Omaha World Herald, Sept. 16, 2003]

NICKEL-AND-DIMING THE TROOPS

It seems just plain mean-spirited to bill injured soldiers for their food.

The U.S. government does, indeed, put a price on the sacrifices of the men and women injured in military combat: $8.10 per day.

That's the daily food allowance soldiers receive, which in 1981 Congress decided enlisted soldiers must repay to the government when they're ''lucky'' enough to be hospitalized and get free food.

It sounds like good fiscal sense in theory—until you confront the reality of a Marine Corps reservist who lost part of his foot in Iraq, unaware he'd get a $210.60 bill upon discharge from the National Navy Medical Center in Bethesda, Md. Or the many other soldiers like him, sometimes hospitalized for long periods, sometimes handicapped for life.

And the government is busy nickel-and-diming these heroes amid a bureaucracy where a million dollars is penny-ante change. (Once upon a time, it might have bought a hammer and a toilet seat or two.)

Florida Rep. C.W. Bill Young, chairman of the House Appropriations Committee, personally paid the tab for the reservist hospitalized in Bethesda. His bill to correct the inequity, introduced Sept. 3, already has 114 co-sponsors. It seems likely to sail through Congress in the next few weeks.

Technically, the 1981 law does prevent ''double-dipping''—paying the hospitalized soldiers the $8.10 food allowance and feeding them, too. But the government already bends the rules for soldiers in combat. Young's bill would extend that exception to soldiers battling to recover from combat injuries.

What a small price to pay for the men and women who paid so much to protect this country.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 226—TO AUTHORIZE REPRESENTATION BY THE SENATE LEGAL COUNSEL IN THE CASE OF JOSUE ORTA RIVERA V. CONGRESS OF THE UNITED STATES OF AMERICA, ET AL

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 226

Whereas, in the case of *Josue Orta Rivera* v. *Congress of the United States of America, et al.*, Civil No. 03–1684 (SEC), pending in the United States District Court for the District of Puerto Rico, the plaintiff has named an defendants all Members of the Senate, as well as the Vice President, the President Pro Tem, the Secretary of the Senate, the Sergeant at Arms, and the Congress;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1), the Senate may direct its counsel to defend Members and Officers of the Senate in civil actions relating to their official responsibilities;

Whereas, pursuant to section 708(c) of the Ethics in Government Act of 1978, 2 U.S.C.

§288g(c), the Senate may direct its counsel to perform other duties: Now therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent all Members of the Senate, the Vice President, the President Pro Tem, the Secretary of the Senate, the Sergeant at Arms, and the Congress, in the case of *Josue Orta Rivera* v. *Congress of the United States of America, et al.*

SENATE RESOLUTION 227—EXPRESSING THE PROFOUND SORROW OF THE SENATE FOR THE DEATH OF INDIANA GOVERNOR FRANK O'BANNON AND EXTENDING THOUGHTS, PRAYERS, AND CONDOLENCES TO HIS FAMILY, FRIENDS AND LOVED ONES

Mr. BAYH (for himself and Mr. LUGAR) submitted the following resolution; which was considered and agreed to:

S. RES. 227

Whereas Frank O'Bannon devoted his entire life to public service and to the people of the State of Indiana;

Whereas Frank O'Bannon dedicated his life to defending the Nation's principles of freedom and democracy, serving in the United States Air Force from 1952 until 1954;

Whereas Frank O'Bannon served 18 years in the Indiana State Senate and 8 years as Lieutenant Governor of Indiana;

Whereas, on November 5, 1996, Frank O'Bannon was elected the 47th Governor of the State of Indiana, where he served until his death on September 13, 2003;

Whereas Frank O'Bannon was a true friend to Indiana, and a gentle man of integrity, kindness, and good works; and

Whereas Frank O'Bannon will be remembered as a loving husband to his wife Judy, a devoted father to his 3 children, and a caring grandfather to his 5 grandchildren: Now, therefore, be it

Resolved, That the Senate—

(1) has learned with profound sorrow of the death of the Honorable Frank O'Bannon, Governor of Indiana, on September 13, 2003;

(2) extends its condolences to the O'Bannon family, especially to his wife Judy, his children Jonathan, Jennifer, and Polly, and his grandchildren Beau, Chelsea, Asher, Demi, and Elle;

(3) expresses its profound gratitude to Frank O'Bannon for the services that he rendered to the Nation in the United States Air Force and the Indiana State Legislature, and as Governor of Indiana; and

(4) recognizes with respect Frank O'Bannon's integrity, steadfastness, and loyalty to the State of Indiana and to the United States.

SENATE CONCURRENT RESOLUTION 69—PROVIDING THAT ANY AGREEMENT RELATING TO TRADE AND INVESTMENT THAT IS NEGOTIATED BY THE EXECUTIVE BRANCH WITH OTHER COUNTRIES MUST COMPLY WITH CERTAIN MINIMUM STANDARDS

Mr. FEINGOLD submitted the following concurrent resolution; which was referred to the Committee on Finance:

S. CON. RES. 69

Whereas there is general consensus among the American public and the global community that, with respect to international trade and investment rules—

(1) global environmental, labor, health, food security, and other public interest standards must be strengthened to prevent a global ''race to the bottom'';

(2) domestic environmental, labor, health, food security, and other public interest standards and policies must not be undermined, including those based on the use of the precautionary principle, the internationally recognized legal principle which holds that, when there is scientific uncertainty regarding the potential adverse effects of an action or a product or technology, governments should act in a way that minimizes the risk of harm to human health and the environment;

(3) provision and regulation of public services such as education, health care, transportation, energy, water, and other utilities are basic functions of democratic government and must not be undermined;

(4) raising standards in developing countries requires additional assistance and respect for diversity of policies and priorities;

(5) countries must be allowed to design and implement policies to sustain family farms and achieve food security;

(6) healthy national economies are essential to a healthy global economy, and the right of governments to pursue policies to maintain and create jobs must be upheld;

(7) the right of State and local and comparable regional governments of all countries to create and enforce diverse policies must be safeguarded from imposed downward harmonization; and

(8) rules for the global economy must be developed and implemented democratically and with transparency and accountability; and

Whereas many international trade and investment agreements in existence and currently being negotiated do not serve these interests, and have caused substantial harm to the health and well-being of communities in the United States and within countries that are trading partners of the United States: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That any agreement relating to trade and investment that is negotiated by the executive branch with other countries should comply with the following:

(1) REGARDING INVESTOR AND INVESTMENT POLICY.—No such agreement that includes provisions relating to foreign investment may permit foreign investors to challenge or seek compensation because of a measure of a government at the national, State, or local level that protects the public interest, including, but not limited to, public health, safety, and welfare, the environment, and worker protections, unless a foreign investor demonstrates that the measure was enacted or applied primarily for the purpose of discriminating against foreign investors or investments.

(2) REGARDING SERVICES.—Any such agreement, to the extent applicable, shall comply with the following:

(A)(i) The agreement may not discipline government measures relating to—

(I) public services, including public services for which the government is not the sole provider;

(II) services that require extensive regulation;

(III) essential human services; and

(IV) services that have an essentially social component.

(ii) The services described in subclauses (I) through (IV) of clause (i) include, but are not limited to, public benefit programs, health care, health insurance, public health, child care, education and training, the distribution of controlled substances and products, including alcohol and tobacco and firearms, research and development on natural and social sciences, utilities including energy utilities, water, waste disposal and sanitation, national security, maritime, air, surface, and other transportation services, postal services, energy extraction and related services, and correctional services.

(B) The agreement shall permit countries that have made commitments in areas covered in subparagraph (A) to revise those commitments for the purposes of public interest regulation without financial or other trade-related penalties.

(C) The agreement shall ensure that rules on subsidies and government procurement fully protect the ability of governments to support and purchase services in ways that promote economic development, social justice and equity, public health, environmental quality, and human and workers' rights.

(D) The agreement shall make no new commitments on the temporary entry of workers because such policies should be determined by the Congress, after consideration by the congressional committees with jurisdiction over immigration to avoid an array of inconsistent policies and policies which fail to—

(i) include labor market tests that ensure that the employment of such temporary workers will not adversely affect other similarly employed workers;

(ii) involve labor unions in the labor certification process implemented under the immigration program for temporary workers under section 101(a)(15)(H)(i) of the Immigration and Nationality Act, including the filing by an employer of an application under section 212(n)(1) of that Act; and

(iii) guarantee the same workplace protections for temporary workers that are available to all workers.

(E) The agreement shall guarantee that all governments that are parties to the agreement can regulate foreign investors in services and other service providers in order to protect public health and safety, consumers, the environment, and workers' rights, without requiring the governments to establish their regulations to be the least burdensome option for foreign service providers.

(3) REGARDING POLICIES TO SUPPORT AMERICAN WORKERS AND SMALL, MINORITY, AND WOMEN-OWNED BUSINESSES.—Any such agreement shall preserve the right of Federal, State, and local governments to maintain or establish policies to support American workers and small, minority, or women-owned businesses, including, but not limited to, policies with respect to government procurement, loans, and subsidies.

(4) REGARDING ENVIRONMENTAL, LABOR, AND OTHER PUBLIC INTEREST STANDARDS.—Any such agreement—

(A) may not supersede the rights and obligations of parties under multilateral environmental, labor, and human rights agreements; and

(B) shall, to the extent applicable, include commitments, subject to binding enforcement on the same terms as commercial provisions—

(i) to adhere to specified workers' rights and environmental standards;

(ii) not to diminish or fail to enforce existing domestic labor and environmental provisions; and

(iii) to abide by the core labor standards of the International Labor Organization (ILO).

(5) REGARDING UNITED STATES TRADE LAWS.—No such agreement may—

(A) contain a provision which modifies or amends, or requires a modification of or an amendment to, any law of the United States that provides to United States businesses or workers safeguards from unfair foreign trade practices, including any law providing for—

(i) the imposition of countervailing or antidumping duties;

(ii) protection from unfair methods of competition or unfair acts in the importation of articles;

(iii) relief from injury caused by import competition;

(iv) relief from unfair trade practices; or

(v) the imposition of import restrictions to protect the national security; or

(B) weaken the existing terms of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, or the Agreement on Subsidies and Countervailing Measures, of the World Trade Organization, including through the domestic implementation of rulings of dispute settlement bodies.

(6) REGARDING FOOD SAFETY.—No such agreement may—

(A) restrict the ability of the United States to ensure that food products entering the United States are rigorously inspected to establish that they meet all food safety standards in the United States, including inspection standards;

(B) force acceptance of different food safety standards as ''equivalent'', or require international harmonization of food safety standards, which undermine the level of human health protection provided under domestic law; or

(C) restrict the ability of governments to enact policies to guarantee the right of consumers to know where and how their food is produced.

(7) REGARDING AGRICULTURE AND FOOD SECURITY.—No such agreement may, with respect to food and other agricultural commodities—

(A) contain provisions that prevent countries from—

(i) establishing domestic and global reserves,

(ii) managing supply,

(iii) enforcing antidumping disciplines,

(iv) ensuring fair market prices, or

(v) vigorously enforcing antitrust laws,

in order to guarantee competitive markets for family farmers; or

(B) prevent countries from developing the necessary sanitary and phytosanitary standards to prevent the introduction of pathogens or other potentially invasive species which may adversely affect agriculture, human health, or the environment.

(8) REGARDING TRANSPARENCY.—(A) The process of negotiating any such agreement must be open and transparent, including through—

(i) prompt and regular disclosure of full negotiating texts; and

(ii) prompt and regular disclosure of negotiating positions of the United States.

(B) In negotiating any such agreement, any request or offer relating to investment, procurement, or trade in services must be made public within 10 days after its submission if such request or offer—

(i) proposes specific Federal, State, and local laws and regulations in the United States to be changed, eliminated, or scheduled under such an agreement, including, but not limited to, subsidies, tax rules, procurement rules, professional standards, and rules on temporary entry of persons;

(ii) proposes for coverage under such an agreement—

(I) specific essential public services, including, but not limited to, public benefits programs, health care, education, national security, sanitation, water, energy, and other utilities; or

(II) private service sectors that require extensive regulation or have an inherently social component, including, but not limited to, maritime, air transport, trucking, and other transportation services, postal services, utilities such as water, energy, and sanitation, corrections, education and childcare, and health care; or

(iii) proposes a discipline or process of general application which may interfere with the ability of the United States or State, local, or tribal governments to adopt, implement, or enforce laws and regulations identified in clause (i) or provide or regulate services identified in clause (ii).

(C) The broad array of constituencies representing the majority of the people of the United States, including labor unions, environmental organizations, consumer groups, family farm groups, public health advocates, faith-based organizations, and civil rights groups, must have at least the same representation on trade advisory committees and access to trade negotiators and negotiating fora as those constituencies representing commercial interests.

(D) Any dispute resolution mechanism established in any such agreement must be open and transparent, including through disclosure to the public of documents and access to hearings, and must permit participation by nonparties through the filing of amicus briefs, as well as provide for standing for State and local governments as intervenors.

(9) REGARDING GOVERNMENTAL AUTHORITY.—No such agreement may contain provisions that bind national, State, local, or comparable regional governments to limiting regulatory, taxation, spending, or procurement authority without an opportunity for public review and comment described in paragraph (8), and without the explicit, informed consent of the national, State, local, or comparable regional legislative body concerned, through such means as is decided by such legislative body.

(10) REGARDING ACCESS TO MEDICINES AND SEEDS.—(A) No such agreement may contain provisions that prevent countries from taking measures to protect public health by ensuring access to medicines.

(B) No such agreement may constrain the rights of farmers to save, use, exchange, or sell farm-saved seeds and other publicly available seed varieties.

(11) REGARDING DEVELOPING COUNTRIES.—Any such agreement must grant special and differential treatment for developing countries with regard to the timeframe for implementation of the agreement as well as other concerns.

Mr. FEINGOLD. Mr. President, I am pleased to submit legislation to establish some minimum standards for the trade agreements into which our Nation enters. This measure is a companion to H. Con. Res. 276, a resolution introduced in the other body by my colleague from Ohio, (Mr. BROWN).

The record of the major trade agreements into which our Nation has entered over the past few years has been dismal. Thanks in great part to the flawed fast track rules that govern consideration of legislation implementing trade agreements, the United States has entered into a number of trade agreements that have contributed to the significant job loss we have seen in recent years, and have laid open to assault various laws and regulations established to protect workers, the environment, and our health and safety. Indeed, those agreements undermine the very democratic institutions through which we govern ourselves.

The loss of jobs, especially manufacturing jobs, to other countries has been devastating to Wisconsin, and to the entire country. When I opposed the North American Free Trade Agreement, the Uruguay round of the General Agreement on Tariffs and Trade, Permanent Normal Trade Relations for China, and other flawed trade measures, I did so in great part because I believed they would lead to a significant loss of jobs. But even as an opponent of those agreements, I don't think I could have imagined just how bad things would get in so short a time.

The trade policy of this country over the past several years has been appalling. The trade agreements into which we have entered have contributed to the loss of key employers, ravaging entire communities. But despite that clear evidence, we continue to see trade agreements being reached that will only aggravate this problem.

This has to stop. We cannot afford to pursue trade policies that gut our manufacturing sector and send good jobs overseas. We cannot afford to undermine the protections we have established for workers, the environment, and our public health and safety. And we cannot afford to squander our democratic heritage by entering into trade agreements that supercede our right to govern ourselves through open, democratic institutions.

The legislation I submit today sets forth principles for future trade agreements. It is a break with the so-called NAFTA model, and instead advocates the kinds of sound trade policies that will spur economic growth and sustainable development.

The principles set forth in this resolution are not complex. They are straightforward and achievable. The resolution calls for enforceable worker protections, including the core International Labor Organization standards.

It preserves the ability of the United States to enact and enforce its own trade laws.

It protects foreign investors, but states that foreign investors should not be provided with greater rights than those provided under U.S. law, and it protects public interest laws from challenge by foreign investors in secret tribunals.

It ensures that food entering into our country meets domestic food safety standards.

It preserves the ability of Federal, State, and local governments to maintain essential public services and to regulate private sector services in the public interest.

It requires that trade agreements contain environmental provisions subject to the same enforcement as commercial provisions.

It preserves the right of Federal, State, and local governments to use procurement as a policy tool, including through Buy American laws, environmental laws such as recycled content, and purchasing preferences for small, minority, or women-owned businesses.

It requires that trade negotiations and the implementation of trade agreements be conducted openly.

These are sensible policies. They are entirely consistent with the goal of increased international commerce, and in fact they advance that goal.

The outgrowth of the major trade agreements I referenced earlier has been a race to the bottom in labor standards, environmental standards, health and safety standards, in nearly every aspect of our economy. A race to the bottom is a race in which even the winners lose.

We need to turn our trade policies around. We need to pursue trade agreements that will promote sustainable economic growth for our Nation and for our trading partners. The resolution I submit today will begin to put us on that path, and I urge my colleagues to support it.

AMENDMENTS SUBMITTED & PROPOSED

SA 1659. Mr. REED (for himself, Mr. LEVIN, Mr. KENNEDY, Mrs. FEINSTEIN, and Mr. NELSON, of Florida) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes.

SA 1660. Mr. LEVIN (for himself, Mr. DEWINE, Ms. STABENOW, and Mr. VOINOVICH) submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1661. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1662. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1663. Mr. CONRAD submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1664. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1665. Mr. REID (for Mr. DOMENICI (for himself and Mr. REID)) proposed an amendment to the bill H.R. 2754, supra.

SA 1666. Mr. REID (for Mr. DOMENICI (for himself and Mr. REID)) proposed an amendment to the bill H.R. 2754, supra.

SA 1667. Mr. REID (for Mr. DOMENICI (for himself and Mr. REID)) proposed an amendment to the bill H.R. 2754, supra.

SA 1668. Mr. REID (for Mr. DOMENICI (for himself and Mr. REID)) proposed an amendment to the bill H.R. 2754, supra.

SA 1669. Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill H.R. 2754, supra.

SA 1670. Mr. NELSON, of Florida (for himself and Mr. GRAHAM, of Florida) submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1671. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1672. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1673. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1674. Mr. DORGAN (for himself and Mr. CONRAD) submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1675. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra.

SA 1676. Mr. DOMENICI (for Mr. KYL) proposed an amendment to the bill H.R. 2754, supra.

SA 1677. Mr. REID (for Mr. DASCHLE (for himself and Mr. JOHNSON)) proposed an amendment to the bill H.R. 2754, supra.

SA 1678. Mr. DOMENICI (for Mr. SHELBY) proposed an amendment to the bill H.R. 2754, supra.

SA 1679. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra.

SA 1680. Mr. FEINGOLD (for himself and Mr. ALLARD) submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1681. Mr. DOMENICI proposed an amendment to the bill H.R. 2754, supra.

SA 1682. Mr. REID proposed an amendment to the bill H.R. 2754, supra.

SA 1683. Mr. DOMENICI (for Mr. SMITH) proposed an amendment to the bill H.R. 2754, supra.

SA 1684. Mr. VOINOVICH (for himself, Mr. DEWINE, Mr. LEVIN, and Ms. STABENOW) submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1685. Mr. DEWINE submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra.

SA 1686. Mr. BYRD submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1687. Mr. DOMENICI (for Mr. KYL) proposed an amendment to the bill H.R. 2754, supra.

SA 1688. Mr. REID proposed an amendment to the bill H.R. 2754, supra.

SA 1689. Mr. DOMENICI (for Mrs. DOLE) proposed an amendment to the bill H.R. 2754, supra.

SA 1690. Mr. DOMENICI (for Mr. BENNETT) proposed an amendment to the bill H.R. 2754, supra.

SA 1691. Mr. REID (for Mr. WYDEN (for himself and Mr. SMITH)) proposed an amendment to the bill H.R. 2754, supra.

SA 1692. Mr. REID (for Mr. LEVIN (for himself, Mr. DEWINE, Ms. STABENOW, and Mr. VOINOVICH)) proposed an amendment to the bill H.R. 2754, supra.

SA 1693. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1694. Mr. REED submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1695. Mr. CORZINE (for himself and Mr. LAUTENBERG) submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1696. Mr. DOMENICI (for Mr. COCHRAN) proposed an amendment to the bill H.R. 2754, supra.

SA 1697. Mr. REID (for Mr. DORGAN) proposed an amendment to the bill H.R. 2754, supra.

SA 1698. Mr. REID proposed an amendment to the bill H.R. 2754, supra.

SA 1699. Mr. REID (for Mr. CONRAD) proposed an amendment to the bill H.R. 2754, supra.

SA 1700. Mr. DOMENICI (for Mr. THOMAS) proposed an amendment to the bill H.R. 2754, supra.

SA 1701. Mr. REID proposed an amendment to the bill H.R. 2754, supra.

SA 1702. Mr. DOMENICI (for Mr. BENNETT) proposed an amendment to the bill H.R. 2754, supra.

SA 1703. Mr. REID proposed an amendment to the bill H.R. 2754, supra.

SA 1704. Mr. REID (for Mr. WYDEN) proposed an amendment to the bill H.R. 2754, supra.

SA 1705. Mr. REID (for Mr. FEINGOLD) proposed an amendment to the bill H.R. 2754, supra.

SA 1706. Mr. DOMENICI (for himself and Mr. REID) proposed an amendment to the bill H.R. 2754, supra.

SA 1707. Mr. DOMENICI proposed an amendment to the bill H.R. 2754, supra.

SA 1708. Mr. DOMENICI proposed an amendment to the bill H.R. 2754, supra.

SA 1709. Mr. REID (for Mr. BYRD) proposed an amendment to the bill H.R. 2754, supra.

SA 1710. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 2754, supra.

SA 1711. Mr. DOMENICI (for Mr. VOINOVICH (for himself, Mr. DEWINE, Mr. LEVIN, and Ms. STABENOW)) proposed an amendment to the bill H.R. 2754, supra.

SA 1712. Mr. REID proposed an amendment to the bill H.R. 2754, supra.

SA 1713. Mr. DOMENICI (for Mr. SPECTER) proposed an amendment to the bill H.R. 2754, supra.

SA 1714. Mr. REID (for himself and Mr. DOMENICI) proposed an amendment to the bill H.R. 2754, supra.

SA 1715. Mr. DOMENICI (for Mr. WARNER (for himself, Mr. SARBANES, Mr. ALLEN, and Ms. MIKULSKI)) proposed an amendment to the bill H.R. 2754, supra.

SA 1716. Mr. DOMENICI (for himself and Mr. REID) proposed an amendment to the bill H.R. 2754, supra.

SA 1717. Mr. REID (for Mr. REED) proposed an amendment to the bill H.R. 2754, supra.

SA 1718. Mr. REID (for Mr. CORZINE (for himself and Mr. LAUTENBERG)) proposed an amendment to the bill H.R. 2754, supra.

SA 1719. Mr. DOMENICI (for Mr. GRASSLEY (for himself and Ms. MURKOWSKI)) proposed an amendment to the bill H.R. 2754, supra.

SA 1720. Mr. REID (for Mr. SCHUMER) proposed an amendment to the bill H.R. 2754, supra.

SA 1721. Mr. REID (for Mr. SCHUMER) proposed an amendment to the bill H.R. 2754, supra.

SA 1722. Mr. SANTORUM (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 2754, supra.

TEXT OF AMENDMENTS

SA 1659. Mr. REED (for himself, Mr. LEVIN, Mr. KENNEDY, Mrs. FEINSTEIN, and Mr. NELSON of Florida) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the end of title III, add the following:

SEC. 313. No funds appropriated or otherwise made available to the Department of Energy by this Act may be available for activities at the engineering development phases, phase 3 or 6.3, or beyond, in support of advanced nuclear weapons concepts, including the robust nuclear earth penetrator.

SA 1660. Mr. LEVIN (for himself, Mr. DEWINE, Ms. STABENOW, and Mr. VOINOVICH) submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 31, between lines 7 and 8, insert the following:

SEC. 1___. GREAT LAKES REMEDIAL ACTION PLANS AND SEDIMENT REMEDIATION PROGRAMS.

Of the amounts made available by this title under the heading ''GENERAL INVESTIGATIONS'', not less than $1,500,000 shall be available for Great Lakes remedial action plans and sediment remediation programs under section 401 of the Water Resources Development Act of 1990 (33 U.S.C. 1268 note; Public Law 101–640).

SA 1661. Mr. McCAIN submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 39, strike lines 11 through 18.

SA 1662. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 34, line 10, strike the period at the end and insert '': *Provided further,* That of this amount, sufficient funds shall be available for the Secretary of the Interior, not later than 60 days after the last day of the fiscal year, to submit to Congress a report on the amount of acquisitions made by the Department of the Interior during such fiscal year of articles, materials, or supplies that were manufactured outside the United States. Such report shall separately indicate the dollar value of any articles, materials, or supplies purchased by the Department of the Interior that were manufactured outside the United States, an itemized list of all waivers under the Buy American Act (41 U.S.C. 10a et seq.) that were granted with respect to such articles, materials, or supplies, and a summary of total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States. The Secretary of the Interior shall make the report publicly available by posting the report on an Internet website.''.

On page 47, line 12, strike the period at the end and insert '': *Provided further,* That of this amount, sufficient funds shall be available for the Secretary of Energy, not later than 60 days after the last day of the fiscal year, to submit to Congress a report on the amount of acquisitions made by the Department of Energy during such fiscal year of articles, materials, or supplies that were manufactured outside the United States. Such report shall separately indicate the dollar value of any articles, materials, or supplies purchased by the Department of Energy that were manufactured outside the United States, an itemized list of all waivers under the Buy American Act (41 U.S.C. 10a et seq.) that were granted with respect to such articles, materials, or supplies, and a summary of total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States. The Secretary of Energy shall make the report publicly available by posting the report on an Internet website.''.

SA 1663. Mr. CONRAD submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 31, between lines 7 and 8, insert the following:

SEC. 1___. PROJECT REAUTHORIZATIONS.

Section 364(5) of Public Law 106–53 (113 Stat. 314) is amended—

(1) by striking ''$18,265,000'' and inserting ''$21,075,000''; and

(2) by striking ''$9,835,000'' and inserting ''$7,025,000''.

SA 1664. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title III, add the following:

SEC. 313. No funds appropriated or otherwise made available under this title under the heading ''ATOMIC ENERGY DEFENSE ACTIVITIES'' may be obligated or expended for additional and exploratory studies under the Advanced Concepts Initiative until 30 days after the date on which the Administrator for Nuclear Security submits to Congress a detailed report on the planned activities for additional and exploratory studies under the initiative for fiscal year 2004. The report shall be submitted in unclassified form, but may include a classified annex.

SA 1665. Mr. REID (for Mr. DOMENICI (for himself and Mr. REID)) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place insert the following:

WORKING CAPITAL FUND

(RESCISSION)

From unobligated balances under this heading $4,525,000 are rescinded.

SA 1666. Mr. REID (for Mr. DOMENICI (for himself and Mr. REID)) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 32, line 10 strike ''853,517,000'' and insert in lieu thereof ''859,517,000''.

SA 1667. Mr. REID (for Mr. DOMENICI (for himself and Mr. REID)) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place insert the following:

SEC. .That of the funds provided, an additional $3,000,000 shall be available for the Middle Rio Grande, NM project and an additional $3,000,000 shall be available for the Lake Tahoe Regional Wetlands Development project.

SA 1668. Mr. REID (for Mr. DOMENICI (for himself and Mr. REID)) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 33, at the end of line 12 insert the following:

''BUREAU OF RECLAMATION LOAN PROGRAM ACCOUNT

''For administrative expenses necessary to carry out the program for direct loans and/or grants, $200,000, to remain available until expended, of which the amount that can be financed by the Reclamation Fund shall be derived from that fund.''

SA 1669. Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 31, between lines 7 and 8, insert the following:

SEC. 1___. SNAKE RIVER CONFLUENCE INTERPRETATIVE CENTER, CLARKSTON, WASHINGTON.

(a) IN GENERAL.—The Secretary of the Army, acting through the Chief of Engineers (referred to in this section as the ''Secretary'') is authorized and directed to carry out a project to plan, design, construct, furnish, and landscape a federally owned and operated Collocated Civil Works Administrative Building and Snake River Confluence Interpretative Center, as described in the Snake River Confluence Center Project Management Plan.

(b) LOCATION.—The project—

(1) shall be located on Federal property at the confluence of the Snake River and the Clearwater River, near Clarkston, Washington; and

(2) shall be considered to be a capital improvement of the Clarkston office of the Lower Granite Project.

(c) EXISTING STRUCTURES.—In carrying out the project, the Secretary may demolish or relocate existing structures.

(d) COST SHARING.—

(1) TOTAL COST.—The total cost of the project shall not exceed $3,500,000 (excluding interpretative displays).

(2) FEDERAL SHARE.—The Federal share of the cost of the project shall be $3,000,000.

(3) NON-FEDERAL SHARE.—

(A) IN GENERAL.—The non-Federal share of the cost of the project—

(i) shall be $500,000; and

(ii) may be provided—

(I) in cash; or

(II) in kind, with credit accorded to the non-Federal sponsor for provision of all necessary services, replacement facilities, replacement land (not to exceed 4 acres), easements, and rights-of-way acceptable to the Secretary and the non-Federal sponsor.

(B) INTERPRETIVE EXHIBITS.—In addition to the non-Federal share described in subparagraph (A), the non-Federal sponsor shall fund, operate, and maintain all interpretative exhibits under the project.

SA 1670. Mr. NELSON of Florida (for himself and Mr. GRAHAM of Florida) submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 4, line 2, after ''expended,'', insert the following: ''of which not less than $90,000,000 shall be used for Central and

Southern Florida (of which not less than $1,000 shall be made available to permit the Corps of Engineers and Palm Beach County, Florida, to execute a project cooperation agreement for project construction relating to the Winsberg Farm Wetland Restoration Project authorized under section 601(c) of the Water Resources Development Act of 2000 (Public Law 106–541; 114 Stat. 2683)), and''.

SA 1671. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 6, line 8, after the colon, insert the following: ''*Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, shall allocate to the State of South Dakota, the Cheyenne River Sioux Tribe, and the Lower Brule Sioux Tribe not less than $9,000,000 of the funds made available under this heading for use in carrying out certain projects and activities under title VI of the Water Resources Development Act of 1999 (Public Law 106–53; 113 Stat. 385)''.

SA 1672. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 16, line 12, before the period, insert the following: '': *Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, shall allocate to the State of South Dakota, the Cheyenne River Sioux Tribe, and the Lower Brule Sioux Tribe not less than $5,000,000 of the funds made available under this heading for use in carrying out certain projects and activities under title VI of the Water Resources Development Act of 1999 (Public Law 106–53; 113 Stat. 385)''.

SA 1673. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, line 18, strike ''$131,700,000, to remain available until expended:'' and insert ''$130,700,000, to remain available until expended, of which not more than $3,216,000 shall be used to carry out the Upper Mississippi and Illinois Navigation Study:''.

On page 4, line 25, after the colon, insert the following: ''*Provided further,* That the Secretary of the Army is directed to use not less than $21,000,000 of the funds made available under this heading to carry out the Upper Mississippi River System Environmental Management Program:''.

SA 1674. Mr. DORGAN (for himself and Mr. CONRAD) submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 54, line 19, before the period at the end, insert the following: '': *Provided further,* That the $750,000 that is made available under this heading for a transmission study on the placement of 500 megawatt wind energy in North Dakota and South Dakota shall be nonreimbursable''.

SA 1675. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

After section 104, insert the following:

''The Secretary is directed and authorized to design, remove and dispose of oil bollards and associated debris in Burlington Harbor, VT, at full Federal expense.''

SA 1676. Mr. DOMENICI (for Mr. KYL) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . LOWER COLORADO RIVER BASIN DEVELOPMENT.

(a) IN GENERAL.—Notwithstanding section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)), no amount from the lower Colorado River Basin Development Fund shall be paid to the general fund of the Treasury until each provision of the revised Stipulation Regarding a Stay and for Ultimate Judgment Upon the Satisfaction of Conditions, filed in United States district court on April 24, 2003, in Central Arizona Water Conservation District v. United States (No. CIV 95–625–TUC–WDB (EHC), No. CIV 95–1720–OHX–EHC (Consolidated Action)), and any amendment or revision thereof, is met.

(b) PAYMENT TO GENERAL FUND. If any of the provisions of the stipulation referred to in subsection (a) are not met by the date that is 10 years after the date of enactment of this Act, payments to the general fund of the Treasury shall resume in accordance with section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)).

(c) AUTHORIZATION. Amounts in the Lower Colorado River Basin Development Fund that but for this section would be returned to the general fund of the Treasury may not be expended until further Act of Congress.

SA 1677. Mr. REID (for Mr. DASCHLE (for himself and Mr. JOHNSON)) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 33, line 12, before the period at the end, insert the following: '': *Provided further,* That of the funds provided under this heading, an additional $5,000,000 may be available for the Mni Wiconi project, South Dakota''.

SA 1678. Mr. DOMENICI (for Mr. SHELBY) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 15, line 16, after the colon, insert the following: ''*Provided further,* That the Secretary of the Army, acting through the Chief of Engineers, may use not less than $5,461,000 of the funds made available under this heading for the Alabama-Coosa River, Alabama (including for routine operations and maintenance work at Swift Creek Park), of which not less than $2,500,000 may be used for annual maintenance dredging of navigational channels of the Alabama-Coosa River''.

SA 1679. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 63, between lines 2 and 3 insert the following:

SEC. 3___. REPORT ON EXPENDITURES FOR THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION ACT.

Not later 180 days after the date of enactment of this Act, the Secretary of Energy shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on administrative expenditures of the Secretary for the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384 et seq.).

SA 1680. Mr. FEINGOLD (for himself and Mr. ALLARD) submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 32, lines 11 through 14, strike ''$56,330,000 shall be available for transfer to the Upper Colorado River Basin Fund and,'' and insert ''$56,330,000 shall be available for transfer to the Upper Colorado River Basin Fund: Provided, That the Secretary of the Interior shall release to the Congress and the public a report prepared by the Bureau of Reclamation detailing project cost overruns and including revised cost estimates and project recommendations within 90 days of enactment of this Act and,''

SA 1681. Mr. DOMENICI proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 67, strike line 7 through line 11 and insert in lieu thereof:

"SEC. 506. CLARIFICATION OF INDEMNIFICATION TO PROMOTE ECONOMIC DEVELOPMENT.

''Subsection (b)(2) of section 3158 of the National Defense Authorization Act for Fiscal Year 1998 (42 U.S.C. 7274q(b)(2)) is amended by adding the following after subparagraph (C):

'' '(D) Any successor, assignee, transferee, lender, or lessee of a person or entity described in subparagraphs (A) through (C).'.''

(b) The amendment made by section 506, as amended by this section, is effective as of the date of enactment of the National Defense Authorization Act for Fiscal Year 1998.

SA 1682. Mr. REID proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . Section 560(f) of the Public Law 106–53 is amended by striking ''$5,000,000'' and inserting in lieu thereof ''7,500,000''.

SA 1683. Mr. DOMENICI (for Mr. SMITH) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 42, between lines 5 and 6, insert the following:

SEC. 2___. TUALATIN RIVER BASIN, OREGON.

(a) AUTHORIZATION TO CONDUCT FEASIBILITY STUDY.—The Secretary of the Interior may conduct a Tualatin River Basin water supply feasibility study—

(1) to identify ways to meet future water supply needs for agricultural, municipal, and industrial uses;

(2) to identify water conservation and water storage measures;

(3) to identify measures that would—

(A) improve water quality; and

(B) enable environmental and species protection; and

(4) as appropriate, to evaluate integrated water resource management and supply needs in the Tualatin River Basin, Oregon.

(b) FEDERAL SHARE.—The Federal share of the cost of the study conducted under subsection (a)—

(1) shall not exceed 50 percent; and

(2) shall be nonreimbursable and nonreturnable.

(c) ACTIVITIES.—No activity carried out under this section shall be considered a supplemental or additional benefit under Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)).

(d) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $2,900,000, to remain available until expended.

SA 1684. Mr. VOINOVICH (for himself, Mr. DEWINE, Mr. LEVIN, and Ms. STABENOW) submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 13, line 21, before the period at the end, insert the following: ''*: Provided further,* That the Secretary of the Army is directed to use at least $1,000,000 of the funds provided under this heading for the Great Lakes fishery and ecosystem restoration program''.

SA 1685. Mr. DEWINE submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 31, between lines 7 and 8, insert the following:

SEC. 1___. FLOOD DAMAGE REDUCTION, MILL CREEK, CINCINNATI, OHIO.

Not later than 1 year after the date of enactment of this Act, the Secretary of the Army, acting through the Chief of Engineers, shall complete the general reevaluation report for the project for flood damage reduction, Mill Creek, Cincinnati, Ohio.

SA 1686. Mr. BYRD submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 42, line 20, before the period at the end, insert '', of which $400,000 shall be made available to the Office of International Market Development to carry out a program to implement, and serve as an administrative center in support of, the multi-agency Clean Energy Technology Exports Initiative''.

SA 1687. Mr. DOMENICI (for Mr. KYL) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 34, line 6, strike ''$56,525,000'' and insert ''$54,425,000''.

On page 42, between lines 5 and 6, insert the following:

SEC. 2___. FACILITATION OF INDIAN WATER RIGHTS.

The Secretary of the Interior may extend, on an annual basis, the repayment schedule of debt incurred under section 9(d) of the Act of August 4, 1939 (43 U.S.C. 485h(d)) to facilitate Indian water rights settlements in the State of Arizona.

SA 1688. Mr. REID proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 13 of the bill, line 21, before the period, insert the following:

: *Provided further,* That within funds provided herein, $500,000 may be used for completion of design and initiation of construction of the McCarran Ranch, NV, environmental restoration project

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SA 1689. Mr. DOMENICI (for Mrs. DOLE) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 16, line 12, before the period at the end, insert the following: ''*: Provided further,* That the Secretary of the Army may use $3,000,000 of the funds provided under this heading to undertake, in connection with the harbor of Morehead City, North Carolina, a project to disperse sand along Bogue Banks''.

SA 1690. Mr. DOMENICI (for Mr. BENNETT) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 2, line 18, after ''expended'' insert the following: '', of which $500,000, along with $500,000 of the unobligated balance of funds made available under this heading in the Energy and Water Appropriations Act, 2003, may be transferred to the Bureau of Reclamation to conduct a feasibility study for the purposes of providing water to Park City and the Snyderville Basin, Utah''.

SA 1691. Mr. REID (for Mr. WYDEN (for himself and Mr. SMITH)) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 15, line 8, strike ''facilities:'' and insert ''facilities; and of which $500,000 may be available for dredging and other operation and maintenance of the Rogue River, Gold Beach, Oregon''.

SA 1692. Mr. REID (for Mr. LEVIN (for himself, Mr. DEWINE, Ms. STABENOW, and Mr. VOINOVICH)) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 31, between lines 7 and 8, insert the following:

SEC. 1___. GREAT LAKES REMEDIAL ACTION PLANS AND SEDIMENT REMEDIATION PROGRAMS.

Of the amounts made available by this title under the heading ''GENERAL INVESTIGATIONS'', not less than $1,500,000 may be available for Great Lakes remedial action plans and sediment remediation programs under section 401 of the Water Resources Development Act of 1990 (33 U.S.C. 1268 note; Public Law 101–640).

SA 1693. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 63, between lines 2 and 3, insert the following:

SEC. 3___. NEW SOURCE REVIEW DOCUMENTS.

Not later than the later of November 1, 2003, or the date that is 30 days after the date of enactment of this Act, in accordance with a commitment to the Committee on Environment and Public Works of the Senate expressed in a letter from the Department of Energy dated September 25, 2002, the Secretary of Energy shall submit to that Committee a log of documents that are responsive to the requests of the Committee relating to the rules on the new source review program of the Environmental Protection Agency.

SA 1694. Mr. REED submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 42, at the end of line 20 insert:

Provided, That of the funds made available for the Office of Electricity and Energy Assurance, the Office shall provide grants to states and regional organizations to work with system operators, including regional transmission organizations and independent system operators, on transmission system planning. The Office shall require that grantees consider a full range of technology and policy options for transmission system planning, including energy efficiency at customer facilities and in transmission equipment, customer demand response, distributed generation and advanced communications and controls. *Provided further,* That of the funds made available for the Office of Electricity and Energy Assurance, the Office shall develop regional training and technical assistance programs for state regulators and system operators to improve operation of the electricity grid.

SA 1695. Mr. CORZINE (for himself and Mr. LAUTENBERG) submitted an

amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 10, line 9, strike ''That'' and all that follows through line 12 and insert the following: ''That the Secretary of the Army, acting through the Chief of Engineers, shall use not more than $1,000,000 of the funds made available under this heading to continue construction of the project for Passaic River Streambank Restoration, Minish Park, New Jersey, and not more than $6,500,000 of the funds made available under this heading to carry out the project for the Raritan River Basin, Green Brook Sub-Basin, New Jersey: *Provided further,* That the Secretary of the Army,

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SA 1696. Mr. DOMENICI (for Mr. COCHRAN) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 31, between lines 7 and 8, insert the following:

SEC. 1___. Section 592(g) of the Water Resources Development Act of 1999 (Public Law 106–53; 113 Stat. 380) is amended by striking ''$25,000,000 for the period beginning with fiscal year 2000'' and inserting ''$100,000,000''.

SA 1697. Mr. REID (for Mr. DORGAN) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 54, line 19, before the period at the end, insert the following: '': *Provided further,* That the $750,000 that is made available under this heading for a transmission study on the placement of 500 megawatt wind energy in North Dakota and South Dakota may be nonreimbursable''.

SA 1698. Mr. REID proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . Of the funds made available under Operation and Maintenance, General, an additional $500,000 may be made available to the Recreation Management Support Program to work with the International Mountain Bicycling Association to design, build, and maintain trails at Corps of Engineers projects.

SA 1699. Mr. REID (for Mr. CONRAD) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 31, between lines 7 and 8, insert the following:

SEC. 1___. PARK RIVER, GRAFTON, NORTH DAKOTA.

Section 364(5) of the Water Resources Development Act of 1999 (113 Stat. 314) is amended—

(1) by striking ''$18,265,000'' and inserting ''$21,075,000''; and

(2) by striking ''$9,835,000'' and inserting ''$7,025,000''.

SA 1700. Mr. DOMENICI (for Mr. THOMAS) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 54, line 19, before the period, insert the following: '': *Provided further,* That, in accordance with section 203 of the Colorado River Basin Salinity Control Act (43 U.S.C. 1593), electrical power supply and delivery assistance may be provided to the local distribution utility as required to maintain proper voltage levels at the Big Sandy River Diffuse Source Control Unit''.

SA 1701. Mr. REID proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 13 of the bill, line 21, before the period, insert the following:
: *Provided further,* That within funds provided herein, $100,000 may be used for initiation of feasibility studies to address erosion along Bayou Teche, LA within the Chitimacha Reservation.

SA 1702. Mr. DOMENICI (for Mr. BENNETT) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 28, strike lines 13 through 25 and insert the following:

SEC. 115. Section 595 of the Water Resources Development Act of 1999 (113 Stat.383; 117 Stat. 142) is amended—

(1) by striking the section heading and inserting the following:

''SEC. 595. IDAHO, MONTANA, RURAL NEVADA, NEW MEXICO, AND RURAL UTAH.'';

(2) in subsection (a)—

(A) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(B) by striking (a) and all that follows through ''means—'' and inserting the following:

''(a) DEFINITIONS.—In this section:

''(1) RURAL NEVADA.—The term 'rural Nevada' means''; and

(C) by adding at the end the following:

''(2) RURAL UTAH.—The term 'rural Utah' means—

''(A) the counties of Box Elder, Cache, Rich, Tooele, Morgan, Summit, Dagett, Wasatch, Duchesne, Uintah, Juab, Sanpete, Carbon, Millard, Sevier, Emery, Grand, Beaver, Piute, Wayne, Iron, Garfield, San Juan, and Kane, Utah; and

''(B) the portions of Washington County, Utah, that are located outside the city of St. George, Utah.'';

(3) in subsections (b) and (c), by striking ''Nevada, Montana, and Idaho'' and inserting ''Idaho, Montana, rural Nevada, New Mexico, and rural Utah''; and

(4) in subsection (h), by striking ''2001—'' and all that follows and inserting ''2001 $25,000,000 for each of Idaho, Montana, New Mexico, and rural Utah, to remain available until expended.''.

SA 1703. Mr. REID proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . Of the funds made available under Construction, General, $1,500,000 may be made available for work to be carried out under Section 560 of the Water Resources Development Act of 1999 (Public Law 106–53).

SA 1704. Mr. REID (for Mr. WYDEN) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 44, line 14, before the period at the end, insert '', of which $3,000,000 may be available for a defense and security research center''.

SA 1705. Mr. REID (for Mr. FEINGOLD) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 34, line 10, strike the period at the end and insert '': *Provided further,* That of this amount, sufficient funds may be available for the Secretary of the Interior, not later than 60 days after the last day of the fiscal year, to submit to Congress a report on the amount of acquisitions made by the Department of the Interior during such fiscal year of articles, materials, or supplies that were manufactured outside the United States. Such report shall separately indicate the dollar value of any articles, materials, or supplies purchased by the Department of the Interior that were manufactured outside the United States, an itemized list of all waivers under the Buy American Act (41 U.S.C. 10a et seq.) that were granted with respect to such articles, materials, or supplies, and a summary of total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States. The Secretary of the Interior shall make the report publicly available by posting the report on an Internet website.''.

On page 47, line 12, strike the period at the end and insert '': *Provided further,* That of this amount, sufficient funds shall be available for the Secretary of Energy, not later than 60 days after the last day of the fiscal year, to submit to Congress a report on the amount of acquisitions made by the Department of Energy during such fiscal year of articles, materials, or supplies that were manufactured outside the United States. Such report shall separately indicate the dollar value of any articles, materials, or supplies purchased by the Department of Energy that were manufactured outside the United States, an itemized list of all waivers under the Buy American Act (41 U.S.C. 10a et seq.) that were granted with respect to such articles, materials, or supplies, and a summary of total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States. The Secretary of Energy shall make the report publicly available by posting the report on an Internet website.''.

SA 1706. Mr. DOMENICI (for himself and Mr. REID) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 41, line 5, strike ''655'' and insert in lieu thereof ''566''.

SA 1707. Mr. DOMENICI proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 28, line 1 strike ''105–227'' and insert in lieu thereof ''105–277''.

SA 1708. Mr. DOMENICI proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 48, line 8, after the word ''expended:'' insert the following:

''*Provided*, That the Secretary of Energy may use $1,000,000 of available funds to preserve historical sites associated with, and other aspects of the history of, the Manhattan Project''

SA 1709. Mr. REID (for Mr. BYRD) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 42, line 20, before the period at the end, insert '', of which $400,000 may be made available to the Office of International Market Development to carry out a program to implement, and serve as an administrative center in support of, the multi-agency Clean Energy Technology Exports Initiative''.

SA 1710. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the end of title III, add the following:

SEC. 313. No funds appropriated or otherwise made available under this title under the heading ''ATOMIC ENERGY DEFENSE ACTIVITIES'' may be obligated or expended for additional and exploratory studies under the Advanced Concepts Initiative until 30 days after the date on which the Administrator for Nuclear Security submits to Congress a detailed report on the planned activities for additional and exploratory studies under the initiative for fiscal year 2004. The report shall be submitted in unclassified form, but may include a classified annex.

SA 1711. Mr. DOMENICI (for Mr. VOINOVICH (for himself, Mr. DEWINE, Mr. LEVIN, and Ms. STABENOW)) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 13, line 21, before the period at the end, insert the following: '': *Provided further*, That the Secretary of the Army may use at least $1,000,000 of the funds provided under this heading for the Great Lakes fishery and ecosystem restoration program''.

SA 1712. Mr. REID proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place on page 42, after section 211 insert the following:

''SEC. ___. RESTORATION OF FISH AND WILDLIFE HABITAT AND PROVISION OF BOTTLED WATER FOR FALLON SCHOOLCHILDREN.

(a) IN GENERAL.—In carrying out section 2507 of Public Law 101–171, the Secretary of Interior, acting through the Commissioner of Reclamation, shall—

(1) notwithstanding sec. 2507(b) of P.L. 101–171, provide $2.5 million to the State of Nevada to purchase water rights from willing sellers and make necessary improvements for Carson Lake and Pasture.

(2) provide $100,000 to Families in Search of Truth, Fallon, NV for the purchase of bottled water for schoolchildren in Fallon-area schools.

(b) LIMITATION.—The funds specified to be provided in (a)(1) shall only be provided by the Bureau of Reclamation when the title to Carson lake and Pasture is conveyed to the State of Nevada; the waiver of sec. 2507(b) of P.L. 101–171 shall only apply to water purchases for Carson Lake and Pasture.

(c) ADMINISTRATION.—The Secretary of Interior, acting through the Commissioner of Reclamation, may provide financial assistance to State and local public agencies, Indian tribes, nonprofit organization, and individuals to carry out this section and sec. 2507 of P.L. 101–171.

SA 1713. Mr. DOMENICI (for Mr. SPECTER) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. ___. SCHUYLKILL RIVER PARK, PHILADELPHIA, PENNSYLVANIA.

The Secretary of the Army may provide technical, planning, design, and construction assistance for Schuylkill River Park, Philadelphia, Pennsylvania, in accordance with section 564(c) of the Water Resources Development Act of 1996 (Public Law 104–303; 110 Stat. 3785), as contained in the May 2000 report of the Philadelphia District based on regional economic development benefits, at a Federal share of 50 percent and a non-Federal share of 50 percent.

SA 1714. Mr. REID (for himself and Mr. DOMENICI) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 63, between lines 2 and 3 insert the following:

SEC. 3___. MARTIN'S COVE LEASE.

(a) DEFINITIONS.—In this section:

(1) BUREAU OF LAND MANAGEMENT.—The term ''Bureau of Land Management'', hereafter referred to as the ''BLM'', means an agency of the Department of the Interior.

(2) CORPORATION.—The term ''Corporation'' means the Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, located at 50 East North Temple Street, Salt Lake City, Utah.

(3) MARTIN'S COVE.—The term ''Martin's Cove'' means the area, consisting of approximately 940 acres of public lands in Natrona County, Wyoming as depicted on the Martin's Cove map numbered MC–001.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(b) LEASE.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Secretary may enter into an agreement with the Corporation to lease, for a term of 25 years, approximately 940 acres of Federal land depicted on the Martin's Cove map MC–001. The Corporation shall retain the right of ingress and egress in, from and to any part of the leasehold for its use and management as an important historical site.

(2) TERMS AND CONDITIONS.—

(A) SURVEY.—As a condition of the agreement under paragraph (1), the Corporation shall provide a boundary survey to the Secretary, acceptable to the Corporation and the Secretary, of the parcels of land to be leased under paragraph (1).

(B) ACCESS.—

(i) IN GENERAL.—The Secretary and the Corporation shall enter into a lease covenant, binding on any successor or assignee that ensures that, consistent with the historic purposes of the site, public access will be provided across private land owned by the Corporation to Martin's Cove and Devil's Gate. Access shall—

(I) ensure public visitation for historic, educational and scenic purposes through private lands owned by the Corporation to Martin's Cove and Devil's Gate;

(II) provide for public education, ecologic and preservation at the Martin's Cove site;

(III) be provided to the public without charge; and

(IV) permit the Corporation, in consultation with the BLM, to regulate entry as may be required to protect the environmental and historic values of the resource at Martin's Cove or at such times as necessitated by weather conditions, matters of public safety and nighttime hours.

(C) IMPROVEMENTS.—The Corporation may, upon approval of the BLM, improve the leasehold as may become necessary from time to time in order to accommodate visitors to the leasehold.

(D) ARCHAEOLOGICAL PRESERVATION.—The Corporation shall have the obligation to protect and maintain any historical or archaeological artifacts discovered or otherwise identified at Martin's Cove.

(E) VISITATION GUIDELINES.—The Corporation may establish, in consultation with the BLM, visitation guidelines with respect to such issues as firearms, alcoholic beverages, and controlled substances and conduct consistent with the historic nature of the resource, and to protect public health and safety.

(F) NO ABRIDGEMENT.—The lease shall not be subject to abridgement, modification, termination, or other taking in the event any surrounding area is subsequently designated as a wilderness or other protected areas. The lease shall contain a provision limiting the ability of the Secretary from administratively placing Martin's Cove in a restricted land management status such as a Wilderness Study Area.

(G) RIGHT OF FIRST REFUSAL.—The Corporation shall be granted a right of first refusal to lease or otherwise manage Martin's Cove in the event the Secretary proposes to lease or transfer control or title of the land to another party.

(H) FAIR MARKET VALUE LEASE PAYMENTS.—The Corporation shall make lease payments which reflect the fair market rental value of the public lands to be leased, provided however, such lease payments shall be offset by value of the public easements granted by the Corporation to the Secretary across private lands owned by the Corporation for access to Martin's Cove and Devil's Gate.

(I) RENEWAL.—The Secretary may offer to renew such lease on terms which are mutually acceptable to the parties.

(c) MINERAL WITHDRAWAL.—The Secretary shall retain the subsurface mineral estate under the leasehold, provided that the leased lands shall be withdrawn from all forms of entry, appropriations, or disposal under the public land laws and disposition under all laws relating to oil and gas leasing.

(d) NO PRECEDENT SET.—This Act does not set a precedent for the terms and conditions of leases between or among private entities and the United States.

(e) VALID AND EXISTING RIGHTS.—The Lease provided for under this section shall be subject to valid existing rights with respect to any lease, right-of-way, permit, or other valid existing rights to which the property is subject.

(f) AVAILABILITY OF MAP.—The Secretary shall keep the map identified in this section on file and available for public inspection in the Casper District Office of the BLM in Wyoming and the State Office of the BLM, Cheyenne, Wyoming.

(g) NEPA COMPLIANCE.—The Secretary shall comply with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in carrying out this section.

SA 1715. Mr. DOMENICI (for Mr. WARNER (for himself, Mr. SARBANES, Mr. ALLEN, and Ms. MIKULSKI)) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

Provided, That using $200,000 appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, may develop an environmental impact statement for introducing non-native oyster species into the Chesapeake Bay. During preparation of the environmental impact statement, the Secretary may establish a scientific advisory body consisting of the Virginia Institute of Marine Science, the University of Maryland, and other appropriate research institutions to review the sufficiency of the environmental impact statement. In addition, the Secretary shall give consideration to the findings and recommendations of the National Academy of Sciences report on the introduction of non-native oyster species into the Chesapeake Bay in the preparation of the environmental impact statement. Notwithstanding the cost sharing provisions of Section 510(d) of the Water Resources Development Act of 1996, 110 Stat. 3760, the preparation of the environmental impact statement shall be cost shared 50% Federal and 50% non-Federal, for an estimated cost of $2,000,000. The non-Federal sponsors' may meet their 50% matching cost share through in-kind services, provided that the Secretary determines that work performed by the non-Federal sponsor's is reasonable, allowable, allocable, and integral to the development of the environmental impact statement.

SA 1716. Mr. DOMENICI (for himself and Mr. REID) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 14, line 26, strike ''$1,949,000,000'' and insert in lieu thereof ''2,014,000,000''.

SA 1717. Mr. REID (for Mr. REED) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 42, at the end of line 20 insert:

Provided, That of the funds made available for the Office of Electricity and Energy Assurance, the Office may provide grants to states and regional organizations to work with system operators, including regional transmission organizations and independent system operators, on transmission system planning. The Office may require that grantees consider a full range of technology and policy options for transmission system planning, including energy efficiency at customer facilities and in transmission planning, including energy efficiency at customer facilities and in transmission equipment, customer demand response, distributed generation and advanced communications and controls. *Provided further,* That of the funds made available for the Office of Electricity and Energy Assurance, the Office may develop regional training and technical assistance programs for state regulators and system operators to improve operation of the electricity grid.

SA 1718. Mr. REID (for Mr. CORZINE (for himself and Mr. LAUTENBERG)) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 10, line 9, strike ''That'' and all that follows through line 12 and insert the following: ''That the Secretary of the Army, acting through the Chief of Engineers, may use $1,000,000 of the funds made available under this heading to continue construction of the project for Passaic River Streambank Restoration, Minish Park, New Jersey, and $6,500,000 of the funds made available under this heading to carry out the project for the Raritan River Basin, Green Brook Sub-Basin, New Jersey: *Provided further,* That the Secretary of the Army,

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SA 1719. Mr. DOMENICI (for Mr. GRASSLEY (for himself and Ms. MURKOWSKI)) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. ___. (a) MEMORANDUM OF AGREEMENT.—Not later than 45 days after the date of enactment of this Act, the Secretary of Energy and the Secretary of Labor shall enter into a Memorandum of Agreement (referred to in this section as the ''MOA'') under which the Secretary of Labor shall agree to provide technical and managerial assistance pursuant to subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385o et seq.).

(b) REQUIREMENT.—Under the MOA entered into under subsection (a), the Secretary of Labor shall, not later than 90 days after the date of enactment of this Act, assume management and operational responsibility for the development and preparation of claims filed with the Department of Energy under subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385o et seq.), consistent with the regulations under part 852 of title 10, Code of Federal Regulations, including the development of information necessary for the informed consideration of such claims by a physicians panel (which shall include work histories, medical records, and exposure assessments with respect to toxic substances).

(c) PROCUREMENT OF SERVICES.—The Secretary of Labor may procure temporary services in carrying out the duties of the Secretary under the MOA.

(d) DUTIES OF SECRETARY OF ENERGY.—Under the MOA entered into under subsection (a), the Secretary of Energy shall—

(1) consistent with subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385o et seq.), manage physician panels and secure necessary records in response to requests from the Secretary of Labor; and

(2) subject to the availability of appropriations, transfer funds pursuant to requests by the Secretary of Labor.

(e) SUBMISSION TO CONGRESS.—The MOA entered into under subsection (a) shall be submitted to the appropriate committees of Congress and made available to the general public in both printed and electronic forms.

SA 1720. Mr. REID (for Mr. SCHUMER) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 15, line 16, after ''2004'' insert the following: '': *Provided further,* That none of the funds appropriated under this heading may be used for the Great Lakes Sediment Transport Models''.

SA 1721. Mr. REID (for Mr. SCHUMER) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 63, between lines 2 and 3 insert the following:

SEC. 3___. REINSTATEMENT AND TRANSFER OF THE FEDERAL LICENSE FOR PROJECT NO. 2696.

(a) DEFINITIONS.—

(1) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(2) TOWN.—The term ''town'' means the town of Stuyvesant, New York, the holder of Federal Energy Regulatory Commission Preliminary Permit No. 11787.

(b) REINSTATEMENT AND TRANSFER.—Notwithstanding section 8 of the Federal Power Act (16 U.S.C. 801) or any other provision of that Act, the Commission shall, not later than 30 days after the date of enactment of this Act—

(1) reinstate the license for Project No. 2696; and

(2) transfer the license to the town.

(c) HYDROELECTRIC INCENTIVES.—Project No. 2696 shall be entitled to the full benefit of any Federal law that—

(1) promotes hydroelectric development; and

(2) that is enacted within 2 years before or after the date of enactment of this Act.

(d) CO-LICENSEE.—Notwithstanding the issuance of a preliminary permit to the town and any consideration of municipal preference, the town may at any time add as a co-licensee to the reinstated license a private or public entity.

(e) PROJECT FINANCING.—The town may receive loans under sections 402 and 403 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2702, 2703) or similar programs for the reimbursement of the costs of any feasibility studies and project costs incurred during the period beginning on January 1, 2001 and ending on December 31, 2006.

(f) ENERGY CREDITS.—Any power produced by the project shall be deemed to be incremental hydropower for purposes of qualifying for energy credits or similar benefits.

SA 1722. Mr. SANTORUM (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 51, line 13, insert before the period: ''*: Provided,* That from the funds made available under this heading for transfer to the National Institute for Occupational Safety and Health for epidemiological research, $7.5 million shall be transferred to include projects to conduct epidemiological research and carry out other activities to establish the scientific link between radiation exposure and the occurrence of chronic lymphocytic leukemia;

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 Wednesday, September 17, 2003, at 10 a.m. in Room 485 of the Russell Senate Office Building to conduct a hearing on S. 420, a bill to provide for the acknowledgement of the Lumbee Tribe of North Carolina, and for other purposes.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

SUBCOMMITTEE ON WATER AND POWER

Ms. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that the hearing before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources on September 18, at 2:30 p.m. has been rescheduled.

The hearing will now be held on Tuesday, September 23, at 2:30 p.m. in Room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on S. 213, a bill to clear title to certain real property in New Mexico associated with the Middle Rio Grande Project, and for other purposes; S. 1236, a bill directing the Secretary of the Interior to establish a program to control or eradicate Tamarisk in the Western United States, and for other purposes; S. 1516, a bill to further the purposes of the Reclamation Projects Authorization and Adjustment Act of 1992 by directing the Secretary of the Interior, acting through the Commissioner of Reclamation, to carry out an assessment and demonstration program to assess potential increases in water availability for Bureau of Reclamation projects and other uses through control of salt cedar and Russian olive; H.R. 856, a bill authorizing the Secretary of the Interior to revise a repayment contract with the Tom Green County Water Control and Improvement District No. 1, San Angelo project, Texas, and for other purposes; and H.R. 961, a bill to promote Department of the Interior efforts to provide a scientific basis for the management of sediment and nutrient loss in the Upper Mississippi River Basin, and for other purposes. (Contact: Shelly Randel 202–224–7933, Erik Webb 202–224–4756 or Meghan Beal at 202–224–7556).

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Subcommittee on Water and Power, Committee on Energy and Natural Resources, United States Senate, Washington, D.C. 20510–6150.

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, September 24, 2003 to conduct a hearing on S. 1601, the Indian Child Protection and Family Violence Prevention Act of 2003.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on September 16, 2003, at 10 a.m. to conduct a hearing on the nominations of Mr. Harvey S. Rosen, of New Jersey, and Ms. Kristen J. Forbes, of Massachusetts, to be a member of the Council of Economic Advisors, Executive Office of the President; Ms. Julie L. Myers, of Kansas, to be Assistant Secretary of Commerce for Export Enforcement; and Mr. Peter Lichtenbaum, of Virginia, to be Assistant Secretary of Commerce for Export Administration.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Tuesday, September 16, 2003, at 9:30 a.m. for a hearing titled ''Oversight of GAO: What Lies Ahead for Congress' Watchdog?''

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Tuesday, September 16, 2003, at approximately 11 a.m. for a hearing to consider the nomination of C. Suzanne Mencer to be Director, Office of Domestic Preparedness, Department of Homeland Security.

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

COMMITTEE ON THE JUDICIARY

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Tuesday, September 16, 2003, at 9:30 a.m., in the Russell Senate Office Building Room 325 on ''Ensuring the Continuity of the United States Government: The Presidency.''

Witness List: Prof. Akhil Amar, Soutmayd Professor of Law and Political Science, Yale Law School, New Haven, CT; Dr. John C. Fortier, Executive Director, Continuity of Government Commission, Research Associate, American Enterprise Institute, Washington, DC; Mr. M. Miller Baker, Esq., McDermott, Will & Emery, Washington, DC; and Prof. Howard M. Wasserman, Assistant Professor of Law, Florida International University College of Law, Miami, FL.

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

COMMITTEE ON THE JUDICIARY

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Tuesday, september 16, 2003, at 2:30 p.m., in the Dirksen Senate Office Building Room 226 on ''Examining the Importance of the H–1 Visa to the American Economy.''

Stephen Yale-Loehr, Business Committee Chair, American Immigration Lawyers Association, Adjunct professor, Cornell University Law School; Elizabeth Dickson, Advisor, Immigration Services, Ingersoll-Rand Corporation; John Steadman, President-Elect, IEEE–USA; and Patrick Duffy, Human Resources Attorney, Intel Corporation.

The PRESIDING OFFICER. With objection, it is so ordered.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Rules and Administration and the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, September 16, 2003, at 9:30 a.m., to conduct a joint hearing on Ensuring the Continuity of the United States Government: The Presidency.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Tuesday, September 16, 2003, for a joint hearing with the House of Representatives' Committee on Veterans' Affairs, to hear the legislative presentation of The American Legion.

The hearing will take place in room 216 of the Hart Senate Office Building at 10 a.m.

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

SUBCOMMITTEE ON FISHERIES, WILDLIFE, AND WATER

Mr. CRAIG. Mr. President, I ask unanimous consent that the Subcommittee on Fisheries, Wildlife, and

Water be authorized to meet on Tuesday, September 16, at 9:30 a.m., to conduct on oversight hearing on the implementation of the Clean Water Act.

The hearing will take place in SD 406 (Hearing Room).

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

SUBCOMMITTEE ON INTERNATIONAL TRADE AND FINANCE

Mr. CRAIG. Mr. President, I ask unanimous consent that the Subcommittee on International Trade and Finance of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on September 16, 2003, at 2:30 p.m., to conduct a hearing on Financial Reconstruction in Iraq.

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

PRIVILEGE OF THE FLOOR

Mr. FEINGOLD. Mr. President, I ask unanimous consent that privilege of the floor be granted to Andrew Ayers, a legal intern with my Judiciary Committee staff, during consideration of the debate on S. Res. 17.

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

Mr. REID. Mr. President, on behalf of Senator BINGAMAN, I ask unanimous consent that Dr. Jonathan Epstein and Mr. Eric Burman, legislative fellows in his office, be given floor privileges during the pendency of H.R. 2754, and any votes thereupon.

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

AUTHORIZING REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 226, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 226) to authorize representation by the Senate Legal Counsel in the case of Josue Orta Rivera v. Congress of the United States of America, et al.

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

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table; and that any statements relating to this matter be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The resolution (S. Res. 226) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 226

Whereas, in the case of Josue Orta Rivera v. Congress of the United States of America, et al., Civil No. 03–1684 (SEC), pending in the United States District Court for the District of Puerto Rico, the plaintiff has named as defendants all Members of the Senate, as well as the Vice President, the President Pro Tem, the Secretary of the Senate, the Sergeant at Arms, and the Congress;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1), the Senate may direct its counsel to defend Members and Officers of the Senate in civil actions relating to their official responsibilities;

Whereas, pursuant to section 708(c) of the Ethics in Government Act of 1978, 2 U.S.C. §288g(c), the Senate may direct its counsel to perform other duties: Now therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent all Members of the Senate, the Vice President, the President Pro Tem, the Secretary of the Senate, the Sergeant at Arms, and the Congress, in the case of Josue Orta Rivera v. Congress of the United States of America, et al.

DEATH OF INDIANA GOVERNOR FRANK O'BANNON

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 227, a resolution submitted early today by Senator BAYH.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 227) expressing the profound sorrow of the Senate for the death of Indiana Governor Frank O'Bannon and extending thoughts, prayers, and condolences to his family, friends, and loved ones.

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

Mr. BROWNBACK. Mr. President, I further ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 227) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 227

Whereas Frank O'Bannon devoted his entire life to public service and to the people of the State of Indiana;

Whereas Frank O'Bannon dedicated his life to defending the Nation's principles of freedom and democracy, serving in the United States Air Force from 1952 until 1954;

Whereas Frank O'Bannon served 18 years in the Indiana State Senate and 8 years as Lieutenant Governor of Indiana;

Whereas, on November 5, 1996, Frank O'Bannon was elected the 47th Governor of the State of Indiana, where he served until his death on September 13, 2003;

Whereas Frank O'Bannon was a true friend to Indiana, and a gentle man of integrity, kindness, and good works; and

Whereas Frank O'Bannon will be remembered as a loving husband to his wife Judy, a devoted father to his 3 children, and a caring grandfather to his 5 grandchildren: Now, therefore, be it

Resolved, That the Senate—

(1) has learned with profound sorrow of the death of the Honorable Frank O'Bannon, Governor of Indiana, on September 13, 2003;

(2) extends its condolences to the O'Bannon family, especially to his wife Judy, his children Jonathan, Jennifer, and Polly, and his grandchildren Beau, Chelsea, Asher, Demi, and Elle;

(3) expresses its profound gratitude to Frank O'Bannon for the services that he rendered to the Nation in the United States Air Force and the Indiana State Legislature, and as Governor of Indiana; and

(4) recognizes with respect Frank O'Bannon's integrity, steadfastness, and loyalty to the State of Indiana and to the United States.

MEASURE READ THE FIRST TIME—S. 1618

Mr. BROWNBACK. Mr. President, I understand that S. 1618, introduced early today by Senator ROCKEFELLER and others, is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The legislative clerk read as follows:

A bill (S. 1618) to reauthorize Federal Aviation Administration Programs for the period beginning on October 1, 2003, and ending on March 31, 2004, and for other purposes.

Mr. BROWNBACK. I now ask for its second reading and object to my own request.

The PRESIDING OFFICER. Objection is heard.

The bill will remain at the desk and have its next reading on the next legislative day.

Mr. ROCKEFELLER. Mr. President, this legislation reauthorizes the Federal Aviation Administration, FAA, and its core programs, including the Airport Improvement Program, AIP, through March 31, 2004. While I would like to have seen Congress pass a comprehensive multiyear bill, it is not going to be possible by the end of this fiscal year. We need to pass this noncontroversial short-term extension to allow the FAA to continue to operate its core safety and airport funding programs.

The Senate produced a very good FAA reauthorization bill, and I was proud to help in developing that legislation. Unfortunately, the final product after negotiations with the House of Representatives was not as good as the Senate-passed bill. It included several dangerous provisions that I could not support, and, in fact, many of my colleagues on both sides of the aisle have raised objections to this legislation.

The most significant reason that the multiyear FAA bill is stalled is because the conference report includes language that allows as large part of the Nation's air traffic control system to be contracted out to private operators. If adopted, the conference report would allow the FAA to initiate the process of contracting out of some air traffic control functions immediately while only delaying the potential privatization for the 4-year life of the bill. The

Senate during its consideration of the FAA bill voted 56 to 41 to keep all air traffic control functions as a governmental responsibility out of a deep sense that the safety of our skies is a basic governmental function. A bipartisan majority of Senators expressed serious concerns over the executive branch's future plans for the management of the air traffic control system, and we voted to impose restrictions on the Administration's proposal precisely to avoid the very outcome of the conference report.

Instead of negotiating in good faith over how best to guarantee the safety of our Nation's air traffic control system, the majority acceded to the administration's demands that they be given absolute discretion over the future of aviation safety. My short-term reauthorization bill includes language that enhances the safety of our Nation's air traffic control while giving the executive branch an appropriate level of flexibility to manage the system. The United States operates the most complex aviation system in the world, and we must have in place a dynamic and responsive safety system. I, along with my colleagues, want to continue to work with the administration on making our aviation system the safest, most secure, and advanced in the world.

This legislation reauthorizes funding for FAA programs and operations. Importantly, the bill reauthorizes the AIP program, which will allow the Federal Government to maintain its investment in airport infrastructure. Small airports are especially dependent on AIP funding to fund capital improvement projects. In addition, the bill includes provisions that reduce small airports share of AIP projects to 5 percent. The bill also allows small airports to maintain their eligibility for AIP entitlement funds if decreased traffic due to September 11 resulted in these airports falling below FAA-required passenger benchmarks.

Congress should not hold up these critical funds over disagreements on unrelated issues. Broad consensus exists on the need for increased aviation funding. This bill will provide approximately $1.7 billion in AIP funds, which on an annualized basis would boost AIP funding by $100 million over last year's level.

To make sure small communities continue to be linked to the Nation's aviation network, the bill also reauthorizes the Essential Air Service Program, EAS, and Small Community Air Service Development Program. The EAS program is a lifeline to our smallest and most isolated communities. The Small Community Air Service Development Program has helped dozens of communities across the country expands their air service options.

Finally, the bill authorizes new security initiatives. Although we have made dramatic improvements in aviation security over the last 20 months, improving aviation security is a continuous process. This bill is another step in this process. The bill addresses the development and implementation of the Computer Assisted Passenger Profiling Program, CAPPS, II, which many Senators are deeply concerned infringes on civil liberties. My legislation imposes a variety of safeguards to protect citizens' privacy as CAPPS II is deployed.

This bill does not have everything I worked hard to include in the Senate's multiyear FAA reauthorization. As I stated, the Senate-passed bill was the result of hard work, compromise, and a commitment to improving the Nation's aviation system. I believe with a little more time, we can find a compromise on the issues holding up the multiyear bill, but in the meantime, the Senate should adopt this short-term reauthorization to preserve the integrity of the aviation system.

ORDERS FOR WEDNESDAY, SEPTEMBER 17, 2003

Mr. BROWNBACK. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 8:30 a.m., Wednesday, September 17. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of the House message to accompany S. 3, the partial-birth abortion ban, with the time until 10:30 a.m. equally divided between Senator SANTORUM and Senator BOXER or their designees, provided that when the Senate resumes consideration of the House message to S. 3 tomorrow, there be 4 hours of debate remaining under the guidelines of the previous agreement.

I further ask unanimous consent that at 10:30 a.m. tomorrow, the Senate proceed to the consideration of H.R. 2691, the Interior appropriations bill.

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

PROGRAM

Mr. BROWNBACK. For the information of all Senators, tomorrow the Senate will resume debate on the House message to accompany S. 3, the partial-birth abortion ban, until 10:30 a.m. At 10:30 a.m., the Senate will begin consideration of H.R. 2691, the Interior appropriations bill. It is the majority leader's intention to have amendments offered and debated throughout the day tomorrow. Rollcall votes, therefore, will occur throughout the day as well. Senators will be notified when the first vote is scheduled.

ADJOURNMENT UNTIL 8:30 A.M. TOMORROW

Mr. BROWNBACK. 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 8:30 p.m., adjourned until Wednesday, September 17, 2003, at 8:30 a.m.