United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE *107th* CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, MONDAY, JUNE 10, 2002 *No. 75*

Senate

The Senate met at 2 p.m. and was called to order by the Honorable HARRY REID, a Senator from the State of Nevada.

PRAYER

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

Almighty God, thank You for the gift of imagination You have entrusted to us. With our imaginations You have enabled us to form, hold, and achieve images of what You can make possible. Coupled with the gifts of hope and expectation, You help us imagine Your best for us and our Nation.

Now at the beginning of this new week, we form and hold a positive picture of this Senate Chamber filled with Your presence. Knowing that we are accountable to You for every thought we think and word we speak, we contemplate how we should act and react under the guidance of Your Spirit. We hold the image of how You want us to relate to others as fellow Americans who also believe in You and want Your vision for our Nation. We sense the civility and greatness of character You want from us. Help us to express to others the same kindness, graciousness, and respect we have received from You.

So we renew our dedication to You. We are Your daughters and sons in Your eternal inclusive family. In loyalty to You, we commit ourselves to work together for Your glory and the good of our beloved Nation. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable HARRY REID, a Senator from the State of Nevada, led the Pledge of Allegiance as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 10, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HARRY REID, a Senator from the State of Nevada, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. REID thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 3 p.m., with Senators permitted to speak therein for up to 10 minutes, with the time equally divided between the two leaders or their designees.

In my capacity as Senator from Nevada, I suggest the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

(Mr. AKAKA assumed the chair.)

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.

MONITORING OF LOBBYISTS

Mr. REID. Mr. President, in this morning's paper I was stunned to read a headline but more stunned to read the story itself. It is in the Washington Post, titled ''GOP Monitoring Lobbyists' Politics.''

Among other things, the article says:

Republicans are researching the party affiliation and political contributions of hundreds of lobbyists in Washington, part of a campaign that could deny government access and prime lobbying jobs to Democrats. . . . Copies of the bulky dossier, being compiled . . . will be given to top White House officials. . . . Early drafts of the report are already in the hands of a few senior administration officials and lawmakers . . . The report, dubbed the K Street Project, has been evolving in fits and starts over the past few years, but has been expedited and expanded now that Republicans control the White House and Federal agencies. Several Republican lobbyists have complained that they aren't getting the access to Federal agencies they feel they deserve.

Republicans involved in the effort said they plan for it to be used by White House officials, lawmakers and staff to determine who can meet with party leaders in discussions of policy matters.

If there was ever anything that was immoral, wrong, and scandalous, this was it. To think that people who have jobs—you can pick any company you want—they hire somebody or they have worked for a number of years and they are going to check to see what party they belong to as to whether or not they can meet with a Federal agency, that is really bad. I do not think it is criminal, but I think it is on the verge of being criminal.

This sets a very dangerous precedent. This, in my opinion, is tantamount to McCarthyism. It involves the practice of compiling a new enemy's list to be circulated out of the administration and the Hill. Maybe we should include, rather than just McCarthy, Nixon. This appears to be something that would have happened during the Watergate years. Enemies are those who belong to or support the Democratic Party. They are targeted.

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

President Bush, during the campaign, said he wanted to change the tone of things in Washington. The tone has not been changed. Someone should get to the President and say this has got to stop. I cannot imagine President Bush liking this. If he does, it speaks volumes.

Top White House officials have said he wanted to change the tone in Washington, but today we learn he is working in tandem with those keeping secret lists of people's personal activity for intimidation, professional retaliation, or maybe even character assassinations.

It is not enough they block access to all non-Republicans. The story indicates that the ''chief aim is to prod trade associations, lobbying firms, and corporations to hire more Republicans to represent them in Washington.''

It is somewhat ironic the party most opposed to affirmative action supports its application when it comes to hiring lobbyists. They support affirmative action when it comes to the hiring of Republican lobbyists but oppose it when it comes to helping a minority gain entry to college.

The person behind this secret list is a frequent adviser and a visitor to the President. His name is in this story. The President should pick up the phone, call his friend, and denounce it and tell him that President George W. Bush will not tolerate what amounts to Nixonian-McCarthyism.

I don't know this President as well as I know his father, but I guarantee the first President Bush would not condone this. I guarantee that. One thing about the previous President Bush, he was a very pragmatic man. This is so wrong. It is extraordinarily disappointing if the President is complicit in these secret lists, lists designed to suppress workers' liberties in order to protect special interests. This is a witch-hunt, tracking and documenting people's personal choices with invasive tactics to threaten and intimidate freedom in the workplace.

If you have someone who represents a company or a trade association, will they now, each time there is an election where there is a turnover, have to fire all Republicans or fire all Democrats until all the lobbyists are of the same party as the person who is President of the United States? I hope not.

We have lobbyists, advocates, and consultants talked about in this article. Does it mean that next they will go after researchers, maybe teachers, doctors, or lawyers? Or maybe people from Hawaii? Pick any group. Where will it end? Will the Republican lawmakers be told not to meet with Democratic constituents? For a party that defined itself during the cold war as the enemy of communism, their new playbook would be the envy of one of the Communist dictators. Every elected official, Republican and Democrat, should denounce this. This is wrong.

Every person should call upon the President, a lawmaker, and say, stop this. Today's story about his supporters secretly compiling a new enemies list changes both the tone and the clock, but it changes it in the wrong direction. We do not want to turn the clock back to Nixonian-McCarthyism.

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.

MEASURES PLACED ON THE CALENDAR—S. 2600 AND H.R. 2143

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

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. I ask unanimous consent that it be in order to read the two bills en bloc, and then I would object to any further proceedings at this time with respect to these measures.

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

The clerk will read the bills by title.

The assistant legislative clerk read as follows:

A bill (S. 2600) to ensure the continuing financial capacity of insurers to provide coverage for risk from terrorism.

A bill (H.R. 2143) to make repeal of the estate tax permanent.

The PRESIDING OFFICER. Objection having been heard, the bills will be placed on the calendar.

The PRESIDING OFFICER. The Senator from Wyoming, Mr. THOMAS, is recognized.

HOMELAND DEFENSE

Mr. THOMAS. Mr. President, I want to take a few minutes to speak a little about an issue that is current: homeland defense. It is not new to be current. Of course, homeland defense has been a very high topic in all of our minds since September 11, and will continue to be, indeed, for a very long time. I think the war we are in requires a great commitment from all of us to continue to provide homeland defense and security and the new prospects for us. I think we are unaccustomed to that. I want to take a few minutes to talk about that, and particularly about the President's proposal.

I think there is no question that homeland defense has become one of our most important issues, and that, of course, is coupled with what we are doing overseas. There is also no question about the best method of homeland defense, partly because it is something we haven't done in the past. It is particularly difficult to develop, and it is hard to determine the best way to do it. It is a domestic activity about which we haven't had to be concerned, particularly in the past, and we haven't dealt with it certainly to the extent we are now and which we must in the future.

I will admit—as you will probably detect—that I am not an expert on this at all. As a matter of fact, I am not on committees that are basically involved with it. But I am a bit disturbed about the reaction to the President's Cabinet-level plan he announced last week. The critics have been very vocal about not having a plan. We have been hearing that now for a number of months—that Tom Ridge has not been doing what we need to do; that he doesn't have the authority which we need to have for him to be able to accomplish what is going on here. Fairly high level criticism has been taking place. It is interesting. The critics for not having a plan are now just about as vocal about the plan the President has provided. I think that certainly is a strange kind of thing and one that is not helpful to accomplishing what we want to accomplish.

I think there is no question that a plan of this size and of this importance will be altered before it is put into place. I do not know of any plan this size that has come before the Congress that isn't changed, polished, and accommodated before it is finally agreed to. But the point is there has to be one to begin. I think it is really important that we deal with it now. It is there, and it is what the critics wanted. I don't know why they continue to criticize.

I am surprised and am a little dismayed that the media has continued to use this proposal as a way to create controversy. I guess the media's job—whatever the issue is—is to pick on that part which is reflected on by a minority of the people who have been critical rather than a majority. Indeed, 72 percent, according to the polls, are favorable. It is kind of interesting that this moves their way, and I guess that is the media's way of doing things.

One of the complaints is that the plan came out overnight—it came out very quickly. I think that is not the case. Tom Ridge did an interview the other day in which he indicated that he has been in place now for quite some time and has not, of course, been a Cabinet member. He has not had anything but his own office to handle. But he has been working on this for a long time, including a lot of people. The idea that it came out overnight from people in the President's little group is not the case. There has been a great deal of talk about it within the administration and a great number of ideas as to how this might best be done, as I think it should be. I think it would be sort of ridiculous to be talking about something publicly before it comes out. That is why it came out now, and that is why this is the time to talk about it publicly.

I must confess I get a little impatient sometimes with the way these things are handled. It is easier to sit up in the

grandstands and be critical than to be on the field and have to call the plays. That is, of course, what the President has to do.

I think it deals with a problem. The problem, of course, is that all of us are concerned about security. There is no one in government or outside government who doesn't want to try to detect what is going on and do something about it, whether it is a highway patrolman in Wyoming or a CIA agent or an FBI agent. Sometimes it is objective, sometimes it is seen, or sometimes it is suspected; then what do you do?

We haven't had a central place to accumulate all of these possibilities so they can be evaluated and so something can be done about them. There are as many as 100 different government agencies that have some responsibility for homeland security. I suspect it is almost every agency. No one has had the final accountability. No one has had to say there is something that really should be investigated and should be turned over to people to further investigate.

The Coast Guard has several missions: Research, rescue, maritime treaties. It, of course, reports to the Transportation Department. Its primary responsibilities are rails, bridges, and airways.

There is really sort of a lack of continuity.

The Customs Service, among other duties, collects tariffs, prevents smuggling. It is part of the Treasury Department whose primary responsibility is not regular security but indeed physical security.

We have not had a central place for this information until recently. Now we do. Times have changed.

Absolutely now, there will be someone in charge. The bureaucrats are unchangeable, it is said. I don't believe that. I believe change can come when the leadership shows the way and insists upon change. That is what it is all about. That is why there are heads of departments. It is why someone is a Cabinet member—to take the policy of their leader, the President, and to ensure it is implemented. I have never worked in the bureaucracy, but I suppose where there are thousands of people, it is a little bit difficult to do. But that is their task. That is their job. I think it can bring about change.

It would be too bad if the Congress failed to change. I read about some of the congressional committees being concerned about their jurisdiction and that this might change that. Change is inevitable. Change is something we ought to look at and accept, if it has merit. The idea of being resistant to change is a little hard, and it is not very helpful. I suspect there is some of that in the Senate. We hear all kinds of voices coming out here.

I am no expert, as I mentioned before. I suspect that maybe this department could be smaller. You could have a little more selective group that comes together, if indeed then the things that are determined by this smaller homeland security group could be brought to the President and to his Cabinet, and the President would ensure that each of these Cabinet people caused their departments to do what is necessary; that is, to support the central agency. Even today I understand that. But when you are talking about hundreds of thousands of people, of course, it is less easy. I understand that.

But I do think there has to be a central but real war to a large extent—both domestically and overseas—carried out by intelligence, and carried out by centralized information, and by knowing what is happening. This is an entirely different kind of war than we have ever had in the past. We will have to have different arrangements to do it.

I think if you are a frontline worker for the FBI, CIA, or some other law enforcement or intelligence agency, and you see something that raises suspicions, you need to have a place to report it immediately, and you should expect your supervisors to treat it with the seriousness it deserves. Information must be fully shared so that we can follow all of those leads and hopefully prevent a tragedy such as happened to us before.

I hope we can consider the President's recommendation and make the changes we believe we need. I think we should see what weaknesses we have had so we can change those. Certainly there have been some. I suppose some of them were not necessarily weaknesses. There is a difference in the climate, there is a difference in the atmosphere, a difference in the challenge. When that happens, there has to be a difference in the way we behave.

I look forward to that. I hope we can come out with something better than what we received.

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. BINGAMAN. 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. BINGAMAN. Mr. President, am I correct, we are in morning business at this time?

The PRESIDING OFFICER. The Senator is correct.

Mr. BINGAMAN. I ask unanimous consent to speak for up to 15 minutes.

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

PENSION REFORM

Mr. BINGAMAN. Mr. President, the front page of today's New York Times has an article with a title that reads ''Enthusiasm Ebbs for Tough Reform in Wake of Enron.'' That headline points out a political challenge that those of us in Congress have to deal with over the next few months; that is, the challenge to enact meaningful legislation while this terrible catastrophe which befell many employees and investors in relation to Enron is still fresh in mind.

I, for one, am not ready to concede that we cannot take legislative action to make sure the country's workers are not protected from the next Enron-type meltdown. We need to take that legislative action. It needs to be a priority of the Congress. I rise to speak about some of the elements that legislative action ought to contain.

Hardly a day goes by when we are not hearing about the collapse of another corporation. It is not just Enron.

I think we have all come to recognize the problem of corporate mismanagement, the problem of questionable accounting, or actual dishonest accounting, the problem of misuse or abuse of the tax provisions early in the law. All of that is, unfortunately, more widespread than just the Enron example.

These corporate misdeeds, executive malfeasance, accounting chicanery, unfortunately, provide grist for virtually every front page we see these days. These stories will not stop on their own. The problems will not go away on their own. Apparently, the system we have had in place for a long time is not working as it should. We need to pass legislation to address these recurring themes or else we will jeopardize a long-term economic recovery, which I know we are all hoping very much is in place and scheduled to occur.

I have referred to a New York Times article. Mr. President, I ask unanimous consent that this article be printed in the RECORD following my remarks.

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

(See Exhibit 1.)

Mr. BINGAMAN. Mr. President, as noted in the article, Senator DASCHLE has indicated he would like to bring a bill to the Senate floor dealing with these issues before the August recess. I think that is an admirable goal, one that the entire Senate needs to join. Unfortunately, the administration and the House and some colleagues in the Senate have not shown the kind of zeal for these necessary reforms that is going to be required. I certainly hope the delays and obstacles that have arisen so far do not prevent us from bringing meaningful legislation before the Senate.

Let me refer to a couple other articles while I am on the subject. I was reading these articles over the weekend in Business Week. One is an editorial in the current edition of Business Week, entitled ''Accounting: Stronger Reforms, Please.'' It is a very interesting article, one that I think deserves the attention of everyone. Let me read a couple of paragraphs from it because I think it does make a point on which all of us need to focus. It says:

If you hoped that the Enron/Andersen scandal would provide an opportunity for just

those sort of farsighted regulatory improvements, start worrying. There are signs that the Bush Administration, under pressure from the accounting lobby and business groups such as the U.S. Chamber of Commerce, is willing to support only mild changes in the current system. And there's a danger that Congress will acquiesce. The House of Representatives has already passed a very watered-down bill.

That's wrong. Halfhearted reform is bad for the public, bad for the economy, and even bad for the accounting industry, which needs to reestablish its credibility. Instead, we think the best bet for strong accounting and financial reform is the legislation proposed by Senator Paul Sarbanes, Democrat from Maryland, chairman of the Senate Banking Committee.

Sarbanes' draft legislation—which is opposed by Senator Phil Gramm, the ranking GOP member of the Banking Committee, and the Bush Administration—would set up a strong private-sector board to oversee public-company accounting.

It goes on to detail what is in the legislation and to urge that the legislation be considered and passed by the Congress.

Mr. President, I ask unanimous consent that the editorial from Business Week's current edition be printed in the RECORD immediately following my remarks.

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

(See Exhibit 2.)

Mr. BINGAMAN. Mr. President, let me also call the attention of my colleagues to another section in the same magazine called The Barker Portfolio. It is entitled ''A Three-Point Plan for SEC Reform.'' It is by Robert Barker, and he goes into some detail about what he believes is an appropriate set of reforms for the Securities and Exchange Commission in order that these kinds of problems can be avoided in the future.

I ask unanimous consent that this be printed in the RECORD following my remarks.

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

(See Exhibit 3.)

Mr. BINGAMAN. Mr. President, before leaving this general subject, let me talk a little about a subject on which I have focused in recent weeks, which is part of this overall corporate mismanagement problem that we have been talking about, and that is the problem of pensions. What do we do to preserve the retirement of workers in these companies that turn out to have cooked the books or to have engaged in some kind of practice that causes the value of that company to go away?

There are essentially four major issues that I think need to be focused on regarding retirement security for Americans. Let me put that chart up and go through the list once more for those who are interested in this subject.

There are four major areas where we need to concentrate our attention and where I believe we can legislate in a constructive fashion. First, we need to have a goal of providing some type of retirement or pension plan for all workers in our society. There is no reason why a person should work 25, 30, 35, even 40 years at a job—or a series of jobs, which is much more common in this day and time—and wind up with no pension, no income, nothing they can depend on other than Social Security once they get to retirement age.

Pensions and retirement coverage have not increased as a percentage of the workforce in the last 30 years. We have recent studies that have indicated that. About 50 percent of private sector workers actually have some sort of pension plan today. That is nationwide. The statistic is 50 percent. My home State of New Mexico, unfortunately, has the worst statistic of any of the 50 States. The percentage is 70 percent have no pension plan and are not expecting to have a pension; whereas, only 30 percent of private sector employees do have some sort of pension plan.

I can remember the discussions in previous years around here where we talked about a three-legged stool when it came to retirement security. We said, when a person gets to retirement, they are going to have three things to depend upon, including Social Security payments—and we all want to see those continue. They are going to have their savings, and they are going to have their pension. The reality is very different from that model or that ideal that we have described for many years.

The reality is that most people who have worked through their entire careers—at least in New Mexico where 70 percent have no pension—most people do not have three legs on the ''stool'' on which they are planning to sit. They have most likely one leg because they have not been able to save a significant amount, and they don't have any sort of pension or 401(k) plan. That is the first issue and the first item on the chart.

All workers need a retirement or pension plan of some sort. We can do much more to expand pension coverage to make it more attractive for employers to provide pension coverage and to make it more available to workers in our society. We need to get about the business of doing that.

Second, all workers should have a right to a secure retirement savings. The problems we have seen with Enron, the problems we have seen with other corporations, where retirement savings have been essentially frittered away, or put into stock by employers which turned out not to have value, need to be fixed. There is legislation that Senator KENNEDY has proposed, which has been reported out of the Health, Education, Labor, and Pensions Committee that I supported. That legislation is awaiting consideration on the Senate floor. I hope very much that we can move to consider that legislation.

In the Finance Committee, we are also looking at legislation which would help ensure that people who have these pension savings, or who have a 401(k) plan, can be guaranteed those funds will be there when they actually retire.

We need to protect employees from conflicts of interest that allow accountants, analysts, investment advisers, and, in some cases, employers to act in their own self-interest, rather than in the best interest of the employee who is supposed to benefit from that retirement plan.

Third, all workers must have pension portability. One of the problems today in our workforce and our work careers is that most people will move from job to job, and over the period of 30, 35, 40 years of work, an average worker may have 8 or 10 jobs. We need to be sure they do not lose their pension benefits as they move from job to job. We need to be sure they can take those benefits with them and that the benefits will be portable.

Again, we need to change the laws to make that occur on a more ready basis. I hope very much we can move to legislation to accomplish that.

The fourth item I want to mention is all workers should be treated on a comparable basis as regards to retirement benefits. We are just now trying to understand all of the various mechanisms that have been used in some of these companies to get us to a result which we have seen over and over where the top executives of a corporation, when the corporation essentially collapses as a financial matter, where the top executives walk off with tens and even hundreds of millions of dollars in deferred compensation, in executive compensation of one kind or another; whereas the workers for that same corporation may wind up with nothing in their retirement accounts.

We need to find out what those abuses are. We need to find out ways to correct them. We need to plug those loopholes in the existing law, and I believe we can.

Mr. President, let me stop with that. I see other colleagues are waiting to speak. I believe very strongly this issue of retirement security needs to be on the agenda of this Congress. I know Senator DASCHLE is trying to put together a series of proposals coming from various committees so that we can consider it before the August recess. Retirement security is one of the provisions that we would hopefully give attention to as a result of or in the wake of the Enron scandal. I hope we can do that. I think the people of the country want to see us do that.

I close with the article with which I began my discussion, ''Enthusiasm Ebbs for Tough Reform in Wake of Enron.'' We need to prove that headline wrong and demonstrate that this Congress is committed to tough reform, and one of those reforms is in the area of retirement security.

Mr. President, I yield the floor.

EXHIBIT 1

[From the New York Times, June 10, 2002]

ENTHUSIASM EBBS FOR TOUGH REFORM IN WAKE OF ENRON

(By Stephen Labaton and Richard A. Oppel, Jr.)

WASHINGTON, June 9.—Six months after the collapse of Enron, a wave of enthusiasm for

overhauling the nation's corporate and accounting laws has ebbed and the toughest proposals for change are all but dead.

A powerful group of lobbyist, playing on partisan disagreement in Congress, appears to have killed efforts to impose tight new controls on corporate conduct. And while some Democrats hope to turn the inaction to their advantage in the fall elections, other lawmakers say that—barring more business meltdowns that deepen the stock market's two-year slump—voters are unlikely to care enough to influence their ballots.

Bills imposing more stringent accounting standards, changing the tax and accounting treatment of employee stock options and setting tougher conflict-of-interest rules for stock analysts and accounting firms have all fallen victim to political gridlock.

Corporate America and the stock markets have not waited for Washington. Instead, they have undertaken a host of changes in response to the problems highlighted by Enron and reinforced by corporate and accounting failures in the telecommunications, cable and energy industries. Investors have fled companies whose accounting or governance practices fail to measure up to post-Enron standards. Some Republicans say all this is evidence that the system is working without heavy-handed interference by lawmakers.

Congress did much to focus attention on flaws in the nation's corporate and accounting practices with a series of investigative hearings earlier this year, the most dramatic of them conducted by committees in the Republican-led House. Even so, with the debate over Enron at full boil, the House adopted a measure in April that rejected the toughest proposed changes.

Senate Democrats now predict that they will have the votes to get a broad measure of their own out of the Banking Committee later this month on a party-line vote, but only by tempering it to win the support of moderates. Senator Tom Daschle, the majority leader, is said by lawmakers and his aides to be committed to trying to move a bill to the Senate floor before the August recess, in hopes of using the Republicans' opposition to the measure against them in fall campaigns.

Even if that bill survives a filibuster threatened by Senate Republicans, lawmakers and lobbyists say that there is little chance of reconciling the differences between the House and the Senate this year.

All of Washington has not been paralyzed. Federal regulators—spurred in part by state prosecutors—have become more aggressive on the enforcement front.

In Congress, meanwhile, legislation to modify pension laws—a response to the enormous losses in the retirement funds of employees at Enron and other troubled companies—might have a better chance of passage.

Still, even lawmakers who favor a tough response to the seeming explosion in business misconduct detect little fervor among voters for a Washington crackdown. Absent a spate of further disclosures, they say, the issues may remain too remote to change many voters' minds.

''The politics will be determined by the circumstances,'' said Senator Jon S. Corzine, Democrat of New Jersey and a former top executive of Goldman, Sachs & Company. ''If we continue to see an erosion of the stock market and more cases like Adelphia and Tyco, then it will be significant. If we see less, then it may have less of an impact, because these can become issues that are hard for people like my mom to understand.''

Other lawmakers, particularly Republicans, say Enron's moment as a galvanizing issue has quickly passed.

''The feeding frenzy is pretty much over,'' said Senator Phil Gramm of Texas, the ranking Republican on the banking committee, who has worked closely with industry lobbyists to kill many of the Democrats' proposals. ''People started looking at making all these radical changes and decided there was a real cost involved and that it would not solve the Enron problem.''

Mr. Gramm said regulators and the marketplace are already correcting the excesses exemplified by Enron and its auditor, Arthur Andersen, relieving Congress of the need to enact comprehensive legislation.

''A lot of progress has already been made,'' he said. ''The president has put forward a strong program, the Securities and Exchange Commission is moving forward, and the exchanges are changing their rules. No one who sits on an audit committee will be the same after Enron.'' Mr. Gramm's wife, Wendy, a onetime government regulator who serve on Enron's audit committee, resigned from the company's board last week.

Representative Billy Tauzin, the Louisiana Republican who held hearings on Enron's collapse, agreed with Mr. Gramm's appraisal, but he said it will still vital for Congress to act, even though the prospects for legislation are not strong.

''It's all very iffy,'' he said. ''There is a huge rift between where the Senate believes these issues ought to go and what the House has already passed. I don't know if it gets worked out in time.''

Both Democrats and Republicans have already begun to consider strategies to make the best political use of the issue in the November elections. The Republicans are relying heavily on the rule-making and enforcement actions of the S.E.C.

On the Democratic side, one idea under discussion by advisers to Senator Daschle is to bundle disparate proposals into one package, making it more efficient to both confront recalcitrant Republicans in the House and make a poltical issue in the fall of the legislation's defeat.

In any event, politicians and lobbyists say that any change in the accounting treatment of stock options is dead for the year—largely because of the perception that Silicon Valley, where such options are as ubiquitous as the Internet itself, is up for grabs in the 2002 and 2004 elections.

Proposals have been made to force companies to account for options as a compensation cost—now they are not charged against corporate earnings—and to limit the ability of companies to take tax deductions for issuing options. But technology companies, financial firms and corporate trade groups—with the backing of President Bush—have lobbied lawmakers around the country to maintain the current system.

For now, lawmakers say, they have trumped the arguments of such people as Alan Greenspan, the Federal Reserve chairman, and the multibillionaire investor Warren E. Buffett that the current treatment of options contributed to corporate overreaching in the 1990's.

The Bush administration has not been a visible force in the legislative battles, relying instead on likeminded allies—notably Senator Gramm—to bottle up the most ambitious legislation. He has met repeatedly with corporate lobbyists and urged them to press sympathetic Democrats or those facing tight races, like Thomas R. Carper of Delaware, Evan Bayh of Indiana and Zell Miller of Georgia, to block legislation from reaching the Senate floor.

Democrats say that effort appears to have failed and that Senator Paul S. Sarbanes, Democrat of Maryland, appears to have the support to get a bill approved by the banking committee. It would sharply curtail the consulting work performed by accounting firms, create a relatively independent oversight board for the accounting profession, require large corporations to rotate their auditors every five years, and impose tighter conflict of interest restrictions on stock analysts than the measure that was passed by the House.

Mr. Gramm has been working closely with the administration on an alternative measure that does not tighten conflict of interest regulations for analysts or auditing firms. His wife's Enron ties seem to have produced no political pressure on Mr. Gramm—who has announced his intention to retire from the Senate after this year—to shy from the debate.

The post-Enron proposals prompted scores of industry associations and hundreds of corporations to retain lobbyists and use their own employees to try to weaken or kill the measures. They include the American Institute of Certified Public Accountants, which is dominated by the largest firms. Hundreds of companies, including Oracle and Intel, have fought against changing the treatment of stock options. And many of the largest Wall Street firms have lobbied against changes in the laws governing stock analysts.

The drift in Congress largely reflects the power of the accounting profession. Accounting firms ranked as three of President Bush's top eight campaign donors in 2000, and over all, the industry made $14.7 million in campaign donations to both Democrats and Republicans during the last election cycle, according to the Center for Responsive Politics. The profession has influential members in many congressional districts and has been known to use lawmakers' own accountants to lobby them.

Pension legislation may stand a better chance in Congress, although its prospects remain cloudy.

The chairman of the Senate Finance Committee, Max Baucus of Montana, is crafting an alternative to a bill by Senator Edward M. Kennedy, Democrat of Massachusetts, that drew strong opposition from business lobbyists and Republicans.

On some points, Mr. Baucus's bill is likely to contain provisions similar to those in the House bill, like permitting workers to sell company stock awarded as a 401(k) match three years after they receive it. Senate aides say the bill may also place limits on certain forms of executive compensation. Mr. Daschle is warming to the provisions that are expected to form the Baucus proposal, Senate aides say.

But they say the Baucus plan is unlikely to include the Kennedy proposal's provision prohibiting most companies from both offering their stock as a 401(k) investment option and using it to match employee contributions. This was designed to keep employees from putting too much retirement money in their own stock, as happened at Enron.

One major issue that remains unresolved is how to give employees better access to investment advice. Investment management companies have been lobbying to permit firms that administer retirement plans to offer advice to participants. Among other things, they would be permitted to recommend investments for which they could receive a fee.

Senate aides say the Baucus proposal may instead contain a provision encouraging employers to hire independent firms to provide advice.

EXHIBIT 2

[From Business Week]

ACCOUNTING: STRONGER REFORMS, PLEASE

Perhaps the only benefit of a major scandal is that it creates pressure for reforms. Politicians who would otherwise listen to special interests are forced by public pressure to make long-needed changes. Often, the

legislative and regulatory changes that follow a scandal can help build a strong foundation for economic growth.

If you hoped that the Enron/Anderson scandal would provide an opportunity for just those sort of farsighted regulatory improvements, start worrying. There are signs that the Bush Administration, under pressure from the accounting lobby and business groups such as the U.S. Chamber of Commerce, is willing to support only mild changes in the current system. And there's a danger that Congress will acquiesce. The House of Representatives has already passed a very watered-down bill.

That's wrong. Halfhearted reform is bad for the public, bad for economy, and even bad for the accounting industry, which needs to reestablish its credibility. Instead, we think the best for strong accounting and financial reform is the legislation proposed by Senator Paul S. Sarbanes (D-Md.), chairman of the Senate Banking Committee.

Sarbanes' draft legislation—which is opposed by Senator Phil Gramm (R-Tex.), the ranking GOP member of the Banking Committee, and the Bush Administration—would set up a strong private-sector board to oversee public-company accounting. It would severely limit consulting services that accounting firms can offer the companies they audit. And, not the least, the bill would require CEOs and CFOs to sign their company's audit reports and forfeit a year's worth of bonuses, incentive-based pay, and profits on stock sales if the company has to materially restate its earnings. That would reduce the aggravating sight of CEOs claiming they had no idea what kind of wrongdoing their company was engaged in.

Equally important, the Sarbanes bill would authorize more money for the Securities & Exchange Commission and permit the agency to hire at least twice as many professionals as the Bush Administration is willing to fund. These additional resources are essential for the SEC to do its regulatory duty. According to a report from the General Accounting Office, the SEC's workload increased by 80% in the 1990s, but its staffing rose only 20%. In 2001, for example, the SEC reviewed only 16% of all annual reports—way below the desirable level.

No business or profession likes closer oversight. But finding the right balance between markets and regulation is essential for a well-functioning economy. Reform is never easy—but history suggest that it's essential.

EXHIBIT 3

[From Business Week, June 3, 2002]

A THREE-POINT PLAN FOR SEC REFORM

(By Robert Barker)

A specter is haunting Wall Street—the specter of Main Street retreating from investments and toward savings, going from stocks to CDs. That's why, as the late, lamented bull market nears its 20th anniversary this summer, ''we are on the verge of the greatest overhaul of securities regulation since the SEC was created,'' Securities & Exchange Commission Chairman Harvey Pitt said recently. ''Nothing is off the table.''

Pitt was addressing an Investor Summit that the called on May 10 in Washington to air investors' concerns and answer questions. I listened, via the Web, to more than three hours of talk, most of it pertinent (box). Yet some specific investor demands need amplification. Here's a short list of concrete fixes. If Wall Street and its regulators can't deal with this simple stuff, their reform effort will have failed:

FASTER. A CEO today can dump a ton of his company's stock on the first day of the month and need not report it until the 10th day of the next month. Not only should that disclosure be made much sooner—within a day or two of the sale, as now is being discussed—but such insider trades should be disclosed for free via the SEC's Web site, which is not the case today.

Quarterly and annual corporate reports, now required 45 and 90 days, respectively, after each period, will likely be accelerated to 30 and 60 days. That's good, but faster filing should not end there. Mutual-fund holdings should be disclosed at least quarterly instead of every six months, the current rule. Opponents say faster disclosure will make it harder for funds to trade without tipping their hand and ultimately hurting investors. But companies that manage $100 million or more—including most fund advisory firms—already must disclose portfolio holdings 45 days after the close of each quarter. Cut that to 30 days, tops. Short positions, now exempt should be required as well as longs.

FAIRER. The SEC's regulation FD, or Fair Disclosure, seems to have helped put individual investors on a more equal footing with professionals when companies disclose potentially market-moving information. Before its adoption in August, 2000, the public routinely was barred from management's conferencecalls with stock analysts. Not so now. There remains, however, a forbidden zone—the ''road shows'' put on for institutional investors by companies preparing to sell securities, particularly initial public offerings of stock. Just as the SEC was able to invite the public via the Internet to its own recent Investor Summit, investors small as well as large should be asked to attend and pose questions at these pre-IPO presentations. It's one thing to read a prospectus laden with legalese; it's better to hear how management discusses what's in the prospectus.

PLAINER. Speaking of legalese, regulators have long encouraged the use of ''plain English'' in securities filing. A charitable assessment of this initiative would be to say it has achieved limited success. To any who doubt this, I point to the 749-page proxy statement (including Annexes A through N) filed recently by AT&T. If you own AT&T, you're supposed to use this to decide how you'll vote by July 10 on the company's plan to restructure and merge its cable unit with Comcast. Meanwhile, regulators—while trying to make investor communications clear to more than just the securities bar—might also try setting a good example. In SEC lingo, the AT&T proxy is a ''DEFM14A.'' A mutual fund's annual report is an ''N–SAR.'' A tender offer may be a ''13E–4'' or a ''14D–1.'' Our government can do much better.

Only a fool would expect Washington to solve every problem in today's stock market. As SEC Commissioner Isaac Hunt put it: ''The burden rests with individual investors to research the information and make intelligent investment decisions on their own.'' Fair enough. At the same time, investors don't have to buy what Wall Street is selling. So the burden is equally on Wall Street to show honestly that what it's offering is worth buying. Otherwise, I'd say the intelligent investment decision is a bank CD.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I ask unanimous consent to speak in morning business for 10 minutes.

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

KAHO'OLAWE; REBIRTH OF A SACRED HAWAIIAN ISLAND

Mr. AKAKA. Mr. President, I rise today to call my colleagues' attention to an excellent exhibit that opened last week at the Smithsonian Institution's Arts and Industries Building, entitled, ''Kaho'olawe; Rebirth of a Sacred Hawaiian Island.'' The exhibit chronicles the rich history of the island of Kaho'olawe from its mythical beginnings to current efforts towards its protection and revitalization. The exhibit is a project of the Bishop Museum Native Hawaiian Culture and Arts Program, and is sponsored by the Smithsonian Asian Pacific American Program, Bernice Pauahi Bishop Museum, Community Development Pacific, and Protect Kaho'olawe 'Ohana/Fund.

I was deeply moved by the exhibit and its eloquent reflection of the Hawaiian value of ''aloha aina,'' which means love for the land, which serves as a foundation for the culture of Hawaii's indigenous peoples; the Native Hawaiians. The profound appreciation for Hawaiian culture and its values is reflected in Hawaii's state motto, 'Ua mau ke'ea 'o ka 'aina 'i ka pono, ''the life of the land is perpetuated in its righteousness.'' The exhibition celebrates Hawaii's culture and people in telling the story of Kaho'olawe.

Ancient chants—plaintive and poetic oral histories of Hawaii—along with archaeological evidence indicate that Kaho'olawe was inhabited by Native Hawaiians who fished and farmed in coastal and upland settlements scattered across the island. In ancient times, the island was referred to as Kanaloa for the god of the ocean and the foundations of the earth.

From 1941 to 1994, Kaho'olawe and its surrounding waters were under the control of the United States Navy. Both the island and the waters of Kaho'olawe were used as a live-fire training range. In 1990, President George Bush directed the Department of Defense to cease using the island of Kaho'olawe as a training range. In 1993, Congress enacted legislation that recognized the cultural significance of Kaho'olawe, required its return to the State of Hawaii, and directed the Navy to conduct unexploded ordnance cleanup and environmental restoration in partnership with the State of Hawaii. Congress authorized Federal funding through 2003 for the cleanup of Kaho'olawe. We continue to work with the Navy to ensure that this funding is utilized for maximum cleanup of the island before access is turned over to the State of Hawaii in late 2003.

The restoration of Kaho'olawe is more than the cleanup of ordnance. Native Hawaiians also referred to Kaho'olawe as ''Ko Hema Lamalama,'' the Southern Beacon, in reference to the island's use as a navigational aid, or shining beacon, for long-distance voyagers returning to Hawaii. For many Hawaiians, the vision of a fully restored Kaho'olawe serves as a guiding light to the revitalization of Native Hawaiian culture.

I encourage all of my colleagues and their staff to visit this exhibit at the Smithsonian Institution's Arts and Industries Building. I always welcome

the opportunity to share the true essence of Hawaii with my colleagues and our fellow citizens on the U.S. mainland. We have the honor and privilege of showing you a bit of Hawaii in Washington, DC, until September 2, 2002, and I invite you to share in this wonderful experience.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

LOCAL LAW ENFORCEMENT ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 625, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 625) to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes.

Pending:

Reid (for Biden) amendment No. 3807, to provide reliable officers, technology, education, community prosecutors, and training in our neighborhoods.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, let me begin on a point of common ground. We can—each and every one of us—agree that the actions constituting hate crimes are wrong in all respects. Let me state, unequivocally, that as much as we condemn all crimes, a hate crime can be more sinister than a non-hate crime. And let me state, with equal conviction and clarity, that I care about stamping out hate crimes as much as any member of this body. I think everybody know that.

A crime committed not just to harm an individual, but in order to send a message of hatred to an entire community is appropriately punished more harshly, or in a different manner, than other crimes. This is especially true when the targeted community is defined on the basis of immutable traits. The brutal murders of James Byrd in Jasper, TX, and Matthew Shepard, in Laramie, WY, among others, remain seared into our Nation's conscience because of the savagery they suffered solely because of their attackers' irrational and hateful prejudice. The worse a criminal's motive, the worse the crime, and a unanimous Supreme Court recognized as much in upholding Wisconsin's sentencing enhancement for hate crimes. These same considerations also prompted the U.S. Sentencing Commission to establish a sentencing guideline that provides an enhanced sentence for a Federal defendant whose crime was motivated by hate. These decisions are ones we can all applaud.

Not only are the offenses themselves worse, but hate crimes also are more likely to provoke retaliatory crimes. They inflict deep, lasting and distinct injuries—some of which never heal—on victims and their family members. They incite community unrest. And, at bottom, they are downright un-American. The melting pot of America is the most successful multiethnic, multiracial, and multfaith country in all of recorded history. We should keep our proud heritage of diversity in mind as we consider the atrocities routinely sanctioned in other countries committed against persons entirely on the basis of their racial, ethnic, or religious identity.

So we all should be able to agree that the battle against hate crimes is and must be America's fight. And despite the often contentious partisan rhetoric surrounding the issue of Federal hate crimes legislation, there exists widespread agreement on these fundamental points: Hate crimes are insidiously harmful, they should be vigorously prosecuted, and the Federal Government has a role to play in reducing the incidence of these crimes in our Nation. The dispute, then, centers not on whether Congress should act in this area, but rather on what should be done at the national level.

There is no dispute that hate crimes themselves often involve particularly horrific facts. They rivet our attention and move us to consider almost any measure that would appear to check such bigotry. But the proposed legislation introduced by my good friend from Massachusetts, S. 625, also brings us face to face with the foundations of our constitutional structure—namely, bedrock principles of Federalism that, for more than 2 centuries, have vested States with the primary responsibility for prosecuting violent crimes committed within their boundaries. And on this point we must be crystal clear: every hate crime—every bit of criminal conduct that S. 625 proposes to federalize—is, and always has been, a crime in every jurisdiction throughout our Nation. The question is not whether these crimes can be prosecuted, but who should prosecute them under our constitutional framework.

In other words, S. 625 brings us to a difficult intersection between our well-intentioned desire to investigate, prosecute, and, hopefully, end these vicious crimes, and our unequivocal duty to respect the constitutional boundaries governing any legislative action that we take. We, who are trusted with the awesome responsibility of making our Nation's laws, must scrupulously abide by the rule of law in this process. Congress has a duty to make sure that the legislation it enacts is constitutional. To shrug off that duty is more than just negligent; it invites trouble and may even solicit scorn. A Supreme Court Justice for whom I have the greatest respect, Justice Scalia, said the following just a few years ago:

My court is fond of saying that acts of Congress come to the court with a presumption of constitutionality. But if Congress is going to take the attitude that it will do anything it can get away with, and let the Supreme Court worry about the Constitution, perhaps the presumption is unwarranted.

So, while all of us would agree that hate crimes are a problem with which Congress must deal, our focus must be on the appropriate and constitutional means to best accomplish that objective.

In the face of some of the recent hate crimes that have riveted public attention—and have unfortunately made the name James Byrd synonymous with Jasper, TX; and the name Matthew Shepard synonymous with Laramie, WY—I am committed in my view that the Senate must speak out and act against hate crimes.

I have long been on record with my view that the Federal Government can play a valuable role in responding to hate crime. In fact, I sponsored the Hate Crime Statistics Act of 1990. But any Federal response—to be a meaningful and lasting one—must abide by the constitutional limitations imposed on Congress, and be cognizant of the limitations on Congress's enumerated powers that are routinely enforced by the courts. I was a prime sponsor of that bill, and I am proud that I was. It was a bill with a lot of controversy at the time. This is more true today than it would have been even a mere decade ago—ever since the U.S. Supreme Court revisited the Federalism doctrine in a string of decisions beginning in 1992.

Having consistently checked the expansion of Federal jurisdiction in areas traditionally reserved to the States over the past decade, the Supreme Court has cast grave doubt over the legitimacy of S. 625. I am not alone in believing that this bill, if passed into law, will be struck down as an unconstitutional invasion into States' rights. I take no pleasure in holding this view. In fact, I was the primary co-sponsor of the Violence Against Women Act of 1994—a law that created Federal jurisdiction over certain serious acts of violence directed at women. Senator BIDEN was a prime sponsor as well and deserves an awful lot of the credit for that particular bill. I felt strongly about that legislation, and I certainly was not happy to see the Supreme Court strike down a portion of that law as unconstitutional. But I respect, as we all must, the Supreme Court's ruling, and we have a duty to take its lesson to heart—whether or not we personally like them.

So there is a serious constitutional concern with S. 625. But, in the frightening climate of terrorism that we live in today, there is a practical consideration that we also cannot ignore. We must ask ourselves what role our Federal law enforcement agencies should play in violent crimes that historically have been prosecuted by State and local officials. The Federal Bureau of Investigation recently has committed a large number of its agents to work exclusively on terrorism cases. The FBI has shifted its focus away from the investigation of general crimes to the

protection of our homeland security. In my view, this is a step in the right direction. I sincerely hope that everybody in this body, and both bodies, can all agree about that.

Now, more than ever, we can see the line between what is truly national and what is truly local. The question is not just what can we do, but rather, how should we allocate our scarce Federal resources? And what message will we be sending the FBI—who has committed to focus on terrorism—by passing, as historians will no doubt conclude, the greatest expansion of Federal power over crimes traditionally prosecuted by State and local governments?

I have given a great deal of personal thought to this matter in attempting to create a Federal response to hate crimes that would be as effective as possible without implicating the very serious concerns created by S. 625. The amendment I intend to propose before this matter is over is one that I believe would not only solve the problem effectively and pragmatically, but also has the virtue of resting on unquestionably sound constitutional ground.

I care deeply about this issue and am committed to a strong, workable, practical, and constitutional Federal solution. It is precisely because of my commitment to this issue that—in the 2 years since this issue last came to the Senate—I have changed certain aspects of my amendment to strengthen the Federal Government's role in the investigation and prosecution of hate crimes. So, while S. 625 remains in precisely the same form as it was when it was offered as an amendment to the Department of Defense appropriations bill in June 2000—despite the concerns that were raised about its scope and constitutionality—I have worked to change my proposal to make it more aggressive and more acceptable to the supporters of S. 625.

There are two main components to my amendment. First, I would propose creating a meaningful partnership between the Federal Government and the States in combating hate crimes. My amendment would permit the Justice Department to assist State and local authorities in investigating and prosecuting hate crimes by providing Federal manpower as well as financial assistance. The original version of my amendment had capped the amount of Federal grants at $100,000 per case, but the version I propose today removes that ceiling when the need is greater. My amendment contains a completely new provision that would require the Attorney General to designate one Federal prosecutor in every district to act as the Federal liaison for the State and local prosecutions of hate crimes. That Federal prosecutor, will take an active role in helping States prosecute hate crimes, from seeking Federal wiretaps to Federal search warrants. There simply is no reason to believe that State and local law enforcement officials could not prosecute these sorts of cases effectively with the type of Federal assistance that my amendment provides.

My amendment directly remedies the primary concern of those who advocate broad Federal jurisdiction over hate crimes. Such a broad power grab is required, the argument goes, because State and local jurisdictions often lack adequate funding or resources to effectively prosecute hate crimes. While the record would seem to indicate that States have effectively shouldered the oar on prosecuting hate crimes, I certainly accept the fact that such highly publicized prosecutions might strain a smaller community's resources. My amendment directly cures that potential problem without displacing States from their traditional role in law enforcement.

Let us not fail to note that the overwhelming successful record of local prosecutions of hate crimes—many in jurisdictions where the death penalty not only was available, but also played a central role in securing justice—should stand as a testament to the fact that wholesale Federal intervention is not warranted. There has never been a showing that State and local law enforcement officials have been ignoring or neglecting—much less intentionally failing—their duty to prosecute these heinous offenses. The truth seems quite to the contrary. State and local authorities effectively investigated and prosecuted those who perpetrated the reprehensible murders of Matthew Shepard and James Byrd, Jr. No Amount of federalization—much less the measures called for in S. 625—would have made these persecutions any more successful.

This raises a point that I frankly find somewhat puzzling. During the last floor debates on this issue, Senators KENNEDY, DURBIN, my good friend, and Senator REID from Nevada—good people who I know genuinely care about this issue—kept bringing up the tragic cases of Matthew Shepard and James Byrd as reasons to support S. 625. Yet those offenders were prosecuted efficiently and effectively and, in my view, appropriately with the death penalty, which was actually the sentence imposed on two of the killers of James Byrd. That is something that just couldn't happen under S. 625, which doesn't even provide for the possibility of the death penalty. So, if anything, the Matthew Shepard and James Byrd cases stand as testament to the fact that federalization of hate crimes is both unwarranted and in the case of S. 625, less effective than current state laws.

In any event, before we take the decidedly broad step of making every criminal offense motivated by hatred a Federal crime, we ought to equip States and localities with the resources necessary so that they can undertake these criminal investigations and prosecutions on their own.

The second major component of my amendment proposes to define the problem more precisely. Before we swing a broadsword into the constitutionally sensitive area of States' rights, we ought to consider carefully whether a scalpel might do the trick. There is a pile of raw data that has been collected pursuant to the 1990 Hate Crime Statistics Act, including a comparison of the records of different jurisdictions—some with hate crime laws, others without. We need to undertake a comprehensive analysis of that data to determine whether there is, in fact, a problem in certain States' prosecution of hate crimes.

Some 45 States and the District of Columbia already have enacted hate crimes laws, and by any measure, they are aggressively and effectively prosecuting these cases. I am certainly open to being persuaded that the States are failing to prosecute these crimes. But neither S. 625 nor the record developed in support of this legislation appear to make such a case. Analyzing the statistics that already exist to see whether there is a real, verifiable problem with state and local enforcement of hate crimes is a simple, efficient and responsible first step that we, as lawmakers, should take before enacting such sweeping legislation.

In sum, we have widespread agreement that the Federal Government must play a role in our Nation's efforts against hate crimes. The role we define must also respect the Constitution and the structure of our government—a structure that, since the inception of our country, assigns to the States the primary role in criminal law enforcement.

Rather than take a precipitous step that would potentially make every criminal offense motivated by a hatred a Federal offense, we should equip States and localities with the resources necessary to undertake these criminal investigations and prosecutions on their own. At the same time, we should undertake a comprehensive analysis of the raw data that has been collected pursuant to the 1990 act.

My amendment is a measured legislative response that would accomplish the goal of letting no hate crime go unpunished—without bearing any risk of being struck down as unconstitutional by the Supreme Court. It is legislation that could and probably would pass into law. We know that S. 625, as written has no chance of enactment. The House will not take this amendments. It simply has too many problems. I hope it is not presented just for political reasons. Instead of having a political issue, we should take a realistic and responsible step toward addressing this problem, which would be passing my version of this legislation.

Mr. President, as we know, on Friday, immediately after calling up S. 625, the hate crimes bill, the Democratic leadership filed for cloture. This was done for the sole reason of thwarting any meaningful debate on a bill that seeks to overhaul and expand thoroughly the role the Federal Government plays in law enforcement.

I agree wholeheartedly that Senator KENNEDY'S bill, S. 625, is an important piece of legislation that deserves consideration in the Senate. In the past, I too have introduced competing legislation addressing hate crimes. As someone who has remained as involved in this issue as Senator KENNEDY, at a minimum, I deserve the opportunity to offer amendments relevant to the discussion of hate crimes and to improve this bill. I believe my amendments will in fact improve this bill as it reads currently. Moreover, I believe that a majority of my colleagues not only want to consider these amendments, I believe they would approve of my amendments.

Protecting the safety and rights of all Americans is of paramount concern to all Senators. There are, however, many thoughts as to how to provide this protection. No one is threatening to filibuster this bill. My colleagues and I are honestly trying to force a debate on an issue that affects all Americans. It is curious to me why the Democrats are trying to prevent a substantive debate on hate crimes from going forward. By preventing amendments from being offered and considered, the Democrats are shutting the door on any Republican ideas or alternatives, however constructive they may be.

All Senators have the right to consider thoughtfully legislation that will impact significantly how serious crimes are prosecuted in this country. By filing for closure prematurely, the Democratic leadership is prohibiting Senators the right to debate and have a vote on issues that are important to them and the constituents of their States. It is unconscionable to prevent debate on such an important issue. I ask the Democratic leadership to rethink this position, and I ask Senators to oppose cloture and allow us to consider a reasonable amount of amendments to improve this bill.

I will certainly make every effort to keep the amount of those amendments very limited so that this particular debate does not have to go on and on. I hope we will be able to get that done. I noticed S. 625 not only substantially expands current authority over hate crimes, it adds a number of provisions over what we had at least attempted to do before.

Under current Federal law, it is important to note that it is unlawful to injure, intimidate, or interfere with any person because of his or her race, color, religion or national origin. That is the law today. That has been upheld as constitutional. If the person is participating in certain federally protected activities such as attending school, serving as a juror, traveling in interstate commerce, using public accommodations, or working, that person is protected against injury, intimidation, or interference because of race, color, religion or national origin.

Since 1994, Federal law has required a heavier sentence for persons convicted of hate crimes. We have already gone a long way to do that.

We will put in the RECORD before this debate is over some of the statistics that have been presented as to whether or not hate crimes, as defined narrowly, are really a significant percentage of crimes that are committed in this country. My attitude is, if one is committed, it is a significant percentage, but we have to be practical as well. It seems to me, since there is no showing—at least there has not been up to this date—that the State and local law enforcement jurisdictions are failing to prosecute hate crimes and prosecute them with vigor, it seems to me we are going too far with S. 625.

I hope our colleagues will pay attention. I think we could really wind up not doing as much against hate crimes as we could if we would make a real effort to try to bring both bodies together. I would like to get this problem solved once and for all, and I would like to do it in a way the vast majority of us can support because I think the vast majority of Members of Congress will support a reasonably written, effective hate crime statute that does not take away the responsibilities of the State and local governments and law enforcement people to prosecute these matters.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I say to the distinguished senior Senator from Utah, this legislation has already passed the House—232 Members voted for it; in the Senate, 61, almost identical legislation.

The question was raised as to why there was an effort made to move forward on cloture on this bill. We have lots of things to do. When it was reported in the Congressional Quarterly last Friday morning that they, the Republicans, were going to file 40 to 50 amendments just to slow down the train on this legislation, and they had a wide range of subject matters on all the amendments they were going to file, none of which were related to this hate crime legislation, the majority leader felt we had to move on. That is why the cloture motion was filed.

I also say to my friend, the former chairman of the Judiciary Committee, someone who is certainly knowledgeable of things legal in nature, if cloture is invoked, there is still every opportunity, up to 30 hours, to file any germane amendments. I would say if the Senator wants to improve this legislation, it would have to be with germane amendments, not nongermane amendments. So I hope we can move along. I hope cloture is invoked. The majority leader would be happy to work with the Republicans to come up with legislation they believe is better. But this is a matter that has already moved in both bodies of Congress. We should move forward with it.

AMENDMENT NO. 3807 WITHDRAWN

Mr. REID. Mr. President, I withdraw amendment No. 3807.

The PRESIDING OFFICER. The Senator has that right. The amendment is now withdrawn.

Mr. REID. I thank the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I would like to speak to this legislation. First of all, I compliment the ranking member on the Judiciary Committee for the points he made, with which I am in agreement. Recall, this bill federalizes two new hate crimes, adding gender and sexual orientation and disability to existing law. It is a far-reaching proposal.

I am sorry, I cannot accept the excuse that has just been proffered by the assistant majority leader with respect to why cloture was filed on this bill some 14 minutes after the bill was brought to the Senate floor. This is unprecedented. With all due respect, I characterize it as a gag rule on Senators, unprecedented in the way the Senate ordinarily, traditionally acts.

As a matter of comity to Members, it is traditional that Members are allowed to debate and offer amendments to legislation. Only rarely is cloture filed—ordinarily, after there has been an attempt to filibuster a bill. The majority then rightly has the opportunity to bring that debate to a close if enough Members are in agreement to do so. It is very rare cloture motions would be filed immediately after bringing the bill to the floor. This does not give Members enough time to debate the bill or offer amendments and have those amendments voted upon. The reason proffered by the distinguished Senator from Nevada was that they had read in a publication that Republican Senators intended to file some 40 amendments to the bill. I suggest that is not appropriate as a reason for immediately invoking cloture. To my knowledge, it has never been done when the Republican majority introduced bills to the floor.

I remember on one occasion a cloture motion was filed almost immediately and there was a great hue and cry from the other side, as a result of which my recollection is the Republican majority, by unanimous consent, extended the time for debate an additional day.

It is, frankly, a breach of the comity that heretofore has characterized the opportunity for debate in this body, to file that cloture motion some 14 minutes after the bill was brought to the floor—especially because this is such controversial legislation. The two votes that previously were cast here were like 50 to 49, and I have forgotten exactly what the other vote was, but this is a highly contentious issue and one which deserves a great deal of thought and debate. I, therefore, am very hopeful our colleagues—whether they agree with the ultimate legislation or not—will agree it is simply unfair to close off debate and amendments at this very early stage of the consideration of such important legislation.

One reason the Senate should not rush to consideration of this bill is because of the very controversial change that it makes to criminalize not a defendant's actions alone, but the defendant's thought process. Think about this for a minute. This legislation focuses not on the defendant's conduct, or even on his intent—on whether he acted purposefully or with knowledge of risk. Rather, this bill criminalizes the defendant's subjective motive. We are moving perilously close, down the path of creating a penalty for thought crimes.

This is not as distant as you might think, considering, for example, the FBI data that is used by advocates of hate crimes laws to justify this bill. In 1999, they report there was a total of 9,430 hate crimes in the United States. Of these, only 19 were murders. By far, the largest category of actual hate crimes against persons, including property crimes and crimes against society, was the crime of intimidation. Yet this crime is so vague and so inchoate that the FBI does not even bother to calculate incidents of intimidation in its overall crime reports.

What exactly does intimidation mean? Does it simply mean something that is perceived as offensive by the hearer? Some groups, in fact, increasingly invoke terms such as ''hostile speech'' or ''climate of violence'' to describe speech in favor of traditional morality on social and sexual issues. Would a traditional viewpoint on homosexuality or transsexualism be hostile speech and thus a hate crime? It very likely could be under the definitions here.

One organization, the largest organization of women in the country, the Concerned Women for America, has cited an example of a pastor in New York whose billboard advertisement with a Bible verse on it was taken down by city officials who cited hate crimes principles as the rationale. The CWA also cites a recent incident in San Francisco. The board of supervisors officially approved a resolution urging local media not to run an advertisement by a group.

Again, even those who do not agree with the message of traditional values should at least recognize these groups' right to be heard and to exercise their first amendment right of speech. With this type of legislation, we risk criminalizing this speech.

In addition, it is wrong to treat some victims of violent crimes as more special than others. All victims of violent crime should be equal in the eye of the law. When such a crime occurs, the police should not first have to ask, for example, what the victim's race, religion, or sexual preference is. Nor do the 19 murders classified as hate crimes in the year 2000 nor the 17 in 1999 provide much justification for the legislation when more than 15,000 other murders occurred each year—all crimes under State law. It is not as if we have to add this crime in order to assure there is punishment for people who commit violence.

Congress should be concerned about all of these victims, not about just a subset constituting one-tenth of 1 percent of the total. Yet that is what we spend our time on in this body.

I note that one of the bill's provisions attempts to justify or provide a constitutional rationale for the bill. I note that section 2 states that Congress has found ''the incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of the victim poses a serious national problem'' and that the ''prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected.''

I would like to focus on that in two respects.

First of all, it says this is a national problem. But I note that not all national problems are Federal problems. People are murdered every day in this country. That is a national problem. But States provide the laws under which people are prosecuted, and it is ordinarily by a local or county prosecutor. In other words, not every national problem is a Federal problem.

As I will note later, no less than the Chief Justice of the United States has warned Congress against federalizing every crime and finding a Federal solution to every national problem.

But even more important is the suggestion that only certain kinds of crime victims ought to be of concern to us. It said here that this kind of crime devastates not just the actual victim but frequently savages—and I am not exactly sure what the word ''savages'' means—the community sharing the traits that caused the victim to be selected. I presume that is the class of victims—people such as the victim.

As the Presiding Officer is well aware, Senator FEINSTEIN and I have had a constitutional amendment before this body for several years to grant rights to victims of crime. We have argued all of these years that victims of violent crime feel themselves frequently savaged by a system which gives a lot of rights to the defendant but, at best, ignores their rights, and sometimes actually results in them being victimized a second time by the judicial system by not getting notice of key hearings and procedures in which they would have an interest in attending, or by not even being able to sit in the courtroom sometimes. This clearly is activity that savages the community that has been victimized.

Anybody who has been a victim of domestic violence can empathize with the other victims of domestic violence. I have gone to many meetings at a lot of centers at which women who have been abused are sitting in a circle sharing their experiences in order that they be able to cope with and eventually rise above the problem and to understand that they themselves are not the cause of the crime that has been perpetrated against them. They are savaged, all right. They are a group of people to whom we ought to be paying attention. Yet we can't get the support in this body to grant them the rights that are at least somewhat equal to the rights of the accused perpetrators of the crimes upon them. The numerous constitutional amendments which have granted defendants rights should at least be equal in the constitutional rights of these victims of crimes.

I am going to state this in a rather blunt way. It seems to me to be inconsistent, at best, for people to be very concerned about a couple of specific groups of people—transsexuals or homosexuals, for example—that they would believe that other members of their group would feel savaged when someone else in their group has a crime perpetrated upon them but we wouldn't extend that same feeling and that same support and that same kind of action to a vast and much larger number of people who are victimized by crimes every day and for whom there are no victim's rights. We don't designate them hate crimes, and therefore these people have no such rights. I find it discriminatory.

In this Senate body, we never characterize the motives of legislation. It is a very dangerous thing to do, and I resent it. In no way do I characterize the motives of anyone offering this particular amendment. But I ask them to stop and think for a moment about whether it is fair to single out a very small group of people who have a very large lobbying voice for special protection as victims of hate crimes because the group they are a part of feels savaged when they are the victim of a crime. That is the Federal nexus. That is the basis upon which the constitutionality of this action rests, and I submit it is inadequate under our Constitution. But that is the alleged basis. We will do it there, but we will not give rights to the vast majority of people who are victims of violent crime in this society.

Do we not believe or do we not understand that they feel savaged as well? Is their lobbying voice just not as strong? I don't know what it is. But it is unfair.

Let me turn to two other points before I close.

It is obvious to me from the legislative history—I am not elaborate at this point but just to note this—that using the word ''gender'' rather than ''sex'' is a very intentional and very specific choice of words. The bill is intended to take the unprecedented step of making transsexuals and transvestites a federally protected class. There are those who think this is a good idea. I cannot imagine what the Founders—the people who wrote our Constitution—would think of such a provision. But I believe Congress should accept that not all

human impulses are necessarily healthy, that not every desire should be pursued, and that, in any event, these kinds of activities should not be singled out as constitutionally protected given the large number of people in this country who have very different points of view of what is right and wrong. We single out minority action I gather as being constitutionally protected because we are concerned about what the majority would do. In so doing, I believe we pervert the language of the Constitution.

That gets to the next point: the constitutional overreach of this bill. The bill is almost certainly unconstitutional and beyond Congress's powers. The first new offense, justified as an exercise of Congress's 13th amendment power to outlaw the incidents of slavery, fails because it is not tied to the exercise of civil rights or access to public accommodations. The second new offense, justified under the commerce clause, goes too far when it punishes noneconomic violent crime simply because of the use of a weapon that has allegedly traveled in interstate commerce.

The bill also unnecessarily contributes to Congress's federalization of criminal law—a point to which I alluded earlier and on which I said I would expand. This is a process that places great burdens on our Federal courts and undermines their role as a forum for addressing uniquely Federal issues.

I mention the Chief Justice of the United States, Justice Rehnquist. He has repeatedly warned the Congress against unnecessarily creating new Federal criminal offenses, especially where the matter has traditionally been addressed and can be addressed by State courts. The Chief Justice expounded on this problem in his 1998 Year-End Report of the Federal Judiciary. I believe this is important enough to quote at length.

He said:

> The number of cases brought to the Federal courts is one of the most serious problems facing them today. Criminal case filings in Federal courts rose 15 percent in 1998—nearly tripling the 5.2 percent increase in 1997. Over the last decade, Congress has contributed significantly to the rising caseload by continuing to federalize crimes already covered by state laws.

The trend to federalize crimes that traditionally have been handled in state courts not only is taxing the Judiciary's resources and affecting its budget needs, but it also threatens to change entirely the nature of our federal system. The pressure in Congress to appear responsive to every highly publicized societal ill or sensational crime needs to be balanced with an inquiry into whether states are doing an adequate job in these particular areas and, ultimately, whether we want most of our legal relationships decided at the national rather than local level. Federal courts were not created to adjudicate local crimes, no matter how sensational or heinous the crimes may be. State courts do, can, and should handle such problems. While there certainly are areas in criminal law in which the federal government must act, the vast majority of localized criminal cases should be decided in the state courts which are equipped for such matters. This principle was enunciated by Abraham Lincoln in the 19th century, and Dwight Eisenhower in the 20th century—matters that can be handled adequately by the states should be left to them; matters that cannot be so handled should be undertaken by the federal government.

As is very clear by the language of the statute itself, that is not the test used for determining whether or not prosecutions will be held by the Federal Government for these crimes.

The Federal courts are already overwhelmed with existing Federal offenses, at the same time that this Senate is dragging its feet on filling the Federal court vacancies that currently exist, or even holding votes on new judges. Yet here we go creating a whole new set of Federal offenses for crimes that are already proscribed by State law. No doubt the Federal judiciary is watching this debate and thinking to itself, about the Congress, ''there they go again.''

It bears emphasis that the States not only already punish the crimes we are dealing with here as violent crimes; in addition, 45 States and the District of Columbia already have laws punishing hate crimes. What we are doing is creating a double redundancy, a new Federal offense for hate crimes that are already punished in two different ways at the State level.

Nor is it fair to accuse the States of inadequately enforcing their laws in this area. For example, consider the first and third incidents cited in the committee report for this bill involving murder in Humboldt, NE, and in Yosemite Park, CA. The committee report relies on these incidents to supposedly show the need for a new Federal law. But what these incidents show, instead, is how this law is unnecessary and redundant. Indeed, it would punish these offenses less severely than they have been punished under State law.

In the Nebraska crime, prosecutors sought and obtained the death penalty. In the Yosemite case, they are currently seeking the death penalty. Yet had either of these offenses instead been prosecuted under the law envisioned by this bill, the death penalty would not have been an option. The bill provides for no death penalty, even for the most brutal murders. And we call this an appropriate reaction to something we detest so much, something we call a hate crime, that we are willing to bend the Constitution to make it a new Federal offense.

The death penalty would not have been available under this bill, either as a deterrent or as leverage to secure a life sentence during plea bargaining, which is frequently why the death penalty can be successful. So why do we need a Federal law to provide less punishment than is already available under State law?

Finally, this bill would explicitly allow the same defendant to be punished twice for the same crime, based solely on a Federal official's determination that the State sentence that the defendant is already serving has somehow left Federal interests ''unvindicated.''

Although the Supreme Court has been willing to ignore such double prosecutions, Congress, at least, should recognize the unfairness of allowing a defendant to be tried twice punished twice, by two different courts, for the same crime.

Since I see my distinguished colleague from Wisconsin in the Chamber, and because I have such respect for him, for the sense of fairness that he has exhibited over and over in the Judiciary Committee, on which we both sit, while I know he is an ardent supporter of the legislation, I would just ask him, and other colleagues, with whom I have had good dealings over the years, to acknowledge the fact that it is inappropriate for us to have debate on this important matter cut off so soon after the filing of the bill—14 minutes after the bill was brought to the floor, cloture was invoked—to have very little opportunity to present amendments and to have the nature of those amendments restricted.

I could be wrong, but I have been told by staff that even making these crimes' punishment subject to the death penalty would be ruled not germane. I cannot believe that. But if that is true, it shows you how restrictive the cloture rule would be.

I would ask my colleague, and any others who are supporters of this bill, to consider, on something so important, that we should not be invoking cloture so soon in the process but should allow those of us who have constructive suggestions—as in the case of the alternative mentioned by the Senator from Utah—that those of us who have amendments, including those which I would like to offer, to have an opportunity to debate and offer those amendments, and have them acted upon in the way that has traditionally been done in this body.

If it is the case, as the distinguished assistant majority leader said, that we have a lot of other business that we need to get to, then maybe we should not have brought this particular bill at this time. If it is so important, then we need to have the time to debate it. If it takes a back seat to issues that are more important, then we should not have brought it up at this point. I do not think we can have it both ways.

I would ask my colleagues for the same kind of fairness that has been offered to them when the majority was held by another party, and to give us more time to debate and consider amendments on this legislation, and not to proceed with cloture at such an early time in the legislative process.

I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I thank the Senator from Arizona for his kind words. I am in the Chamber with regard to another matter, but I look forward to discussing this issue at a later time.

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

Mrs. MURRAY. Madam President, I join my colleagues today to speak in support of S. 625, the Local Law Enforcement Enhancement Act.

In every corner of our country, communities have been trying to respond to hate crimes. Despite great gains in equality and civil rights throughout the last century, too many Americans are subjected to discrimination, violence, and even death because of who they are. The Federal Bureau of Investigation has documented over 8,000 incidences of crime motivated by bias in the United States in 2000. Crimes motivated by the victim's race, color, religion, sexual orientation, ethnicity, national origin, disability, or gender. These crimes attack the values and rights of every American, yet today there is no federal law stopping these crimes.

Passing the bill before us will give us more tools to fight this special brand of crime. I am pleased to join with many of my colleagues as a co-sponsor of this important legislation. The legislation we are considering would expand the definition of a hate crime and improve prosecution of those who act out ''their hate'' with violence. If someone harms any person because of the victim's race, gender, ethnicity, color, religion, national origin, disability or sexual orientation, they will be punished.

It is important to note that the prosecutor would still have to convince a jury beyond a reasonable doubt that the criminal act was motivated by prejudice, and states would be involved in helping to determine whether a defendant would be charged with a Federal hate crime. The bill would also importantly require the FBI to document and report hate crimes committed against women.

Previously the FBI was only required to collect data from crimes committed because of a person's race, religion, sexual orientation, disability and ethnicity. This bill will allow us to know the ''who,'' ''what'' and ''why'' so we can work to end these crimes against women.

I know some of my colleagues have argued that the states are doing an adequate job of handling hate crimes on their own, and I commend the States for their efforts, but I believe the Federal government has an important role in this as well. At the Federal level, we already prosecute many crimes that are motivated by prejudice. We need to strengthen these Federal hate crimes laws and increase the role of the federal government in ending this violence.

It wasn't that many years ago that we stood up for equality and justice by forcing the States and private citizens to end segregation and discrimination. Now we must do the same for hate crimes against our citizens.

Madam President, we are a Nation of laws. We are a Nation that respects the individual and individual liberty. We are a Nation that rewards hard work. We are a Nation that tolerates and celebrates our diversity. These are some of our most cherished values. We cannot allow hate crimes to threaten our fellow citizens and undermine our democracy. I urge my colleagues to support this important piece of legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 3824

Mr. HATCH. Madam President, I call up amendment No. 3824 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 3824.

Mr. HATCH. Madam 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 amend the penalty section to include the possibility of the death penalty)

On page 10, strike line 14 and all that follows through page 11, line 23, and insert the following:

both;

''(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill; and

''(C) shall be punished by death or imprisonment for any term of years or for life, or both, if death results from the offense.

''(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, OR DISABILITY.—

''(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B), willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, or disability of any person—

''(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both;

''(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill; and

''(iii) shall be punished by death or imprisonment for any term of years or for life, or both, if death results from the offense.''

Mr. HATCH. Madam President, it remains my view that S. 625 is a misguided invasion into an area historically and constitutionally reserved to State and local law enforcement authorities. But let me say now S. 625 is also flawed on its own merits. One of S. 625's most egregious shortcomings is that while it purports to send a message the Federal Government is going to be tough on hate crimes, it actually threatens to weaken the punishment currently available under many State laws for the perpetrators of violent hate crimes.

In the successful State and local prosecutions of the killers of James Byrd, Matthew Shepard, and Billy Jack Gaither, prosecutors and law enforcement officials in Texas, Wyoming, and Alabama were able to consider seeking the death penalty. So they did. Let's pause to consider why they did so.

James Byrd, who was African American, was beaten unconscious, chained to the back of a pickup truck, and dragged 4 miles down rural roads by men who had links to a white supremacist group.

Billy Jack Gaither, who was gay, was bludgeoned with an axe handle, had his throat slit, and then was thrown on a pile of tires and set on fire by men who cited Gaither's sexual orientation as their motivation for the killing.

Matthew Shepard, who was gay, was kidnapped, beaten so severely that his skull was fractured a half dozen times, tied to a fencepost, and left to die by two men who hated homosexuals.

I have no hesitation in concluding that State and local officials acted appropriately in seeking the death penalty for these most heinous of crimes. In the case of James Byrd, they successfully obtained the death penalty for two of the three defendants. In the case of Matthew Shepard, the possibility of the death penalty led to an early plea bargain that resulted in life sentences for both defendants. And in the case of Billy Jack Gaither, the possibility of the death penalty caused one of the two defendants to plead guilty and testify for the Government at the trial, after which he was sentenced to life in prison. The other killer was eventually convicted and ultimately sentenced to life in prison after the victim's family requested that the death penalty not be imposed.

Right now, in a case currently pending in northern California, State prosecutors are pursuing capital charges against two brothers charged with murdering a gay couple. And there is more. I could go on. I have three charts that show just some of the hate crimes cases prosecuted by State and local prosecutors where the death penalty was used successfully.

The facts speak for themselves, and I will not go through these cases one by one. I ask unanimous consent that the crimes noted on these charts be printed in the RECORD.

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

Victim	Defendant	Jurisdiction	Facts	Penalty
James Byrd	Lawrence Russell Brewer	Texas	Beat Byrd (an African-American) unconscious, chained him to the back of a pickup truck and dragged him for miles down rural roads.	Death Penalty.
	John William King	Texas	Beat Byrd (an African-American) unconscious, chained him to the back of a pickup truck and dragged him for miles down rural roads..	Death Penalty.
	Shawn Allen Berry	Texas	Beat Byrd (an African-American) unconscious, chained him to the back of a pickup truck and dragged him for miles down rural roads..	Death Penalty Available. Sentenced to life in prison..
Roxanne Ellis and Michelle Abdill.	Robert Acremant	Oregon	Shot Ellis and Abdill (a homosexual couple) to death as they lay gagged in the back of his truck.	Death Penalty.
Vasudev Patel	Mark Stroman	Texas	Shot Patel (an Indian man) after 9/11 because Stroman thought Patel looked Middle Eastern.	Death Penalty.
Billy Jack Gaither	Steven Mullins	Alabama	Bludgeoned Gaither (a homosexual man) with an axe handle, slit his throat, threw him on top of a pile of tires and set him on fire.	Death Penalty Available. Pled guilty. Sentenced to life in prison without parole.
	Charles Butler Jr.	Alabama	Bludgeoned Gaither (a homosexual man) with an axe handle, slit his throat, threw him on top of a pile of tires and set him on fire.	Death Penalty Available. Sentenced to life in prison without parole only because the victim's parents requested that the prosecution not seek the death penalty.
Sasezley Richardson	Jason Powell	Indiana	Fired 12 shots at Richardson (an African-American) in an attempt to ''earn'' a spider-web tattoo from the Aryan Brotherhood.	Death Penalty Available. Pled guilty and testified for the State in order to avoid the death penalty. Sentenced to life in prison without parole.
	Alex Witmer	Indiana	Drove the truck from which Powell fired 12 shots at Richardson (an African-American) in an attempt to gain acceptance into the Aryan Brotherhood.	Death Penalty Available. Pled guilty. Sentenced to 85 years in prison.
Gary Matson and Winfield Mowder.	Benjamin Williams	California	Shot to death Matson and Mowder (a homosexual couple)	Death Penalty Available. Prosecution ongoing.
	James Williams	California	Shot to death Matson and Mowder (a homosexual couple)	Death Penalty Available. Prosecution ongoing.
Matthew Shepard	Aaron McKinney	Wyoming	Kidnapped Shepard (a homosexual college student), beat him so severely that his skull was fractured a half dozen times, tied him to a fence post and left him to die.	Death Penalty Available. Sentenced to two consecutive life terms. Avoided the death penalty by agreeing not to appeal the life sentences.
	Russell Henderson	Wyoming	Drove the truck into which Shepard (a homosexual college student) was lured, helped tie him to a fence, and, at the very least, stood by while Shepard was beaten senseless.	Death Penalty Available. Pled guilty in order to avoid the death penalty. Sentenced to two consecutive life terms with no possibility of parole.

Mr. HATCH. Madam President, none of these results—none of these death-penalty-eligible cases shown on these charts—would have been possible under S. 625—not one of them. This legislation, while federalizing hate crimes, would not allow capital punishment for those who murder savagely out of bigotry, prejudice, or hatred. The practical effect of S. 625 is to substantially weaken existing State law. In fact, even 18 U.S.C. section 245, the current Federal law that specifically addresses hate crimes, provides for the death penalty.

It is truly ironic that S. 625's failure to provide for the death penalty actually represents a decided benefit to those who would commit these heinous crimes, and it takes away some of law enforcement's most important pretrial bargaining techniques in order to get one or more witnesses to these crimes to testify or one or more participants to testify against the others. Not only would this legislation undermine existing State laws, but it would substantially weaken their protections and weaken law enforcement's ability to get to the bottom of some of these crimes. In consequence, this legislation would be less likely to deter future hate crimes as well as many State laws on the books today.

If we as an institution are serious about addressing the problem of hate crimes, then we must permit for the possibility of the death penalty as being the appropriate punishment in some of these cases. If we are to take these sorts of cases away from State and local law enforcement officials who have been doing such a thorough and effective job prosecuting them with the possibility of the death penalty, then our Federal prosecutions must be equally well equipped and prepared to do as good a job as State and local officials have done.

That is why it would only make sense to support my amendment to provide for the possibility of the death penalty in appropriate cases if you support the underlying bill.

I noticed the distinguished Senator from Oregon is here, and I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. Madam President, I have every day put into the CONGRESSIONAL RECORD the details of a hate crime. These are always violent, they are always sickening, but they also happen to an American citizen. They happen sometimes because the victim is black, gay, disabled, female, or even of Middle Eastern descent. And yet they are all Americans. So they ought to have the concern of all in the Senate.

I wish to speak again on the Senate floor about another crime. It is gruesome. It happened just a year ago, and it involved a young Navajo boy by the name of Fred Martinez, Jr. He had gone to a local rodeo. He was openly gay; apparently also transgender; again, of Navajo descent. He was found south of Cortez, CO. He had died after being repeatedly hit on his head with a rock and left in a small canyon, possibly suffering for an extended period of time before dying.

Police investigated this murder as a hate crime. The perpetrator of this crime, who was recently sentenced, allegedly bragged he ''bug-smashed a fag.''

The victim's mother told the press that she believes her son was killed because he identified himself as transgender. He occasionally dressed as a girl. In the mind of his murderer, Fred deserved to die for such conduct.

I believe the Government's first duty is to defend its citizens against hatred, against the harms that flow from a hate-filled heart. I stand in support of the Local Law Enforcement Enhancement Act of 2001 to make sure that should it ever happen again to a Fred Martinez, or anyone else, it will not go unresponded to by law enforcement at every level. That is really what this bill is about.

I have listened to my colleagues and their concerns about this legislation, and I stand to express my disagreement with parts of what they say.

What is the role of the Federal Government? Some have suggested that we have no place here, that this is the role of the local and State law enforcement. I believe the role of the Federal Government is whatever is necessary to make sure that justice is done, not to overtake local and State authorities but to help, to contribute, to backstop, to provide resources, to provide skills that sometimes are uniquely had by the Federal Government.

I just came from a press conference with Sheriff David O'Malley from the State of Wyoming. He was the local law enforcement official who pursued and ultimately helped in the prosecution of the murderers of Matthew Shepard. It was, frankly, his visit to my office, with the mother of Matthew Shepard, Judy Shepard, that persuaded me to take another look at this issue.

Sheriff O'Malley made clear to me that he was a conservative Republican, but he was for Federal hate crimes legislation because he could have used the help. The horror of that young man's murder so galvanized national opinion and the focus of the media that their little Laramie, WY, law enforcement was overwhelmed by the national scope of this tragedy. Frankly, they did end up prosecuting it well, doing it right, convicting these murderers, but his point was the Federal Government should have been able to show up: We could have used the help.

In the case of James Byrd in Texas, another hideous case, where a black man was dragged to death, in that case, because our Federal hate crimes law already covered issues of race, the Federal Government was able to show up to work and were exceptionally helpful in the pursuit and the prosecution of the murderers of James Byrd.

My response then is, what role is there for the Federal Government? Whatever role is necessary to assure that justice is done. I would like to see the Federal Government show up to work and express the great heart and the values of the American people.

As I listen to some of my colleagues' complaints, I frankly think they make, on occasion, some very valid points. But their point should not be against including gays, gender, and the disabled. Their argument is really against the whole category of hate crimes, this Federal law we have had for over 30 years. Since 1968, we have had Federal hate crimes legislation. As I pointed out, it helped in the case of pursuing the murderers of James Byrd. It did not help in the case of Matthew Shepard.

My point to them is, why oppose its expansion? Why don't they go after race, religion, and national origin? If it is good for those categories, why is it not good for these new categories? That is a question I simply have not yet had answered.

Questions as to constitutionality have been raised, and there may be a point I am missing, but this issue has been fully vetted by the U.S. Supreme Court.

In two cases, RBA v. The City of St. Paul, and Wisconsin v. Mitchell, these cases clearly demonstrate that a hate crimes statute may consider bias motivation when that motivation is directly connected to a defendant's criminal conduct. We are not going after speech. We are not going after thought. We are going after conduct.

As with any criminal law, in any criminal act there are elements of the crime. This is yet another element. It is not the crime, but it is an element in making up the category of the crime. By requiring this connection to criminal activity, these statutes do not chill protected speech and do not violate the first amendment. In Wisconsin v. Mitchell, the Supreme Court made clear that:

The First Amendment does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent.

So it seems clear to me that one can say whatever they want about gays, transgenders, and women. They are not prohibited from doing that. If they act on it, that can be an element in determining whether this falls under the Federal hate crimes law.

So those who oppose this, I really think their argument is not towards its expansion but against the law as a category itself. So their amendment should be to get rid of this as a category. I will not be voting for that. I would not suggest anyone do that because I believe our hate crimes law truly does reflect the big heart of the American people. All crime is hateful. That is a given. We grant that. But when an attack is made on a Navajo homosexual boy, and he is thereby a part of a crime which victimizes a much larger community, what is wrong with our saying, as a people, we want every level of government—the local, the State and the Federal Government—to help to pursue and prosecute such crime? I cannot see the problem with it.

I think the argument that is being made is against the whole statute of hate crimes. It should not be made against gays and lesbians, but it is.

I would like to draw the attention of my colleagues to the case of Mark Bangerter from Boise, ID. He was the victim of a brutal attack, and he wrote the Justice Department and asked for help in pursuing those who had been hurtful to him.

The Justice Department writes back to him saying:

Dear Mr. Bangerter: This letter is in response to your report that on April 15, 1998, you were the victim of a vicious attack by an unidentified individual who apparently believed that you were homosexual. According to the information you provided Special Agent Joseph W. Hess, Jr., on May 12, 1998, the attack caused you severe facial injuries and total blindness in your left eye. Your case was thoroughly discussed with the United States Attorney's office in Boise, Idaho, in an effort to explore prosecutive possibilities under existing Federal hate crime laws. I must regrettably inform you that as a result of those discussions, it was determined that sexual orientation does not fall within the listed elements of hate crimes. Therefore, the Federal Bureau of Investigation lacks the statutory authority to investigate the attacks against you. I strongly encourage you to recontact the Boise Police Department and request that an investigation be fully conducted. Sincerely yours.

Had Mr. Bangerter said, please pursue these criminals because I am black, they would have been able to do that. He said, please pursue them because I am gay, and the Federal Government was not able to do that.

I think that is wrong, and the overwhelming heart of the American people calls upon us to expand an existing constitutional law and to cover these people who, because of their minority status, are more likely victims of crime. Again, if there is a problem with this, it says to the whole category of crime it should not be a problem just because we would include these newly identified minority groups in America; they are certainly deserving of the protection of this law, the values behind this law, which frankly are denied to them now and ought not to be any longer.

I am sorry I have to bring our attention to yet another hate crime in this country, but I suggest it is another reason we ought to act and we ought to do so quickly.

Senator HATCH raises a valid point. I am loathe to see this legislation slowed up. I hope the House will take it up. Perhaps the point he is raising can be resolved then. It is important for this Senate to act this week on this issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, 95 percent of all criminal activities are prosecuted by State and local law enforcement and are prosecuted well. That is the way it ought to be done. That is what is expected to be done. Our laws already cover virtually everything, from a civil rights standpoint, that I mentioned earlier today; that is, race, color, religion, and national origin. Do I think gay people ought to be attacked, brutalized, and mistreated? Heavens, no. I believe these matters have been taken care of at the State and local law enforcement levels. If they are not, they should be. We should do that. My amendment that I will offer provides the money, the facilities, and the ability for the State and local law enforcement people to do it if they need extra help.

I do not think a case is made that we should give protective status to anyone other than for race, color, religion, or national origin, unless we can show that State and local law enforcement is not doing its job. If they are not doing the job, I am the first to support, the first to come out and say nobody should be mistreated. The law should cover everyone.

I made the point, however, that under current law, the Matthew Shepard case and the James Byrd case—two of the most flagrant examples of vicious, unforgivable conduct—these cases were handled well by State and local law enforcement. And, because the prosecutors had the death penalty to hold over these defendants, these criminals, these vicious racists, they were able to force some of the witnesses to cooperate, which helped result in a conviction in one of the trials.

In the case of Matthew Shepard, they obtained a guilty plea immediately, and thus, preserved judicial resources and saved taxpayers extensive amounts of money. The guilty plea was entered into to avoid the death penalty. Having that bargaining tool is a crucial part of law enforcement.

This bill does not preserve this tool. That is one of the most glaring defects in this bill.

There are no demonstrated problems with State and local enforcement of hate crimes.

I am aware of only one time when hearings were held on this legislation. Those are the ones that I, as chairman, scheduled in 1999. Deputy Attorney General Eric Holder conceded in his testimony that an analysis of the hate crimes statistics that have been collected needs to be conducted to determine whether State and local authorities are failing to combat hate crimes. Eric Holder testified that the statistics we have are, to use his term, ''inadequate.''

In fact, there has been never been a showing that state and local law enforcement officials have been ignoring or neglecting—much less intentionally failing—their duty to prosecute these heinous offenses.

Because we don't know the real facts on this critical issue, we have a duty to find out before we pass such sweeping, constitutionally suspect legislation.

I have only learned of a handful of cases—less than a dozen, some of which stretch back almost two decades—where state and local officials are alleged to have failed to investigate or

prosecute hate crimes. This is far from compelling evidence in a system of justice where, according to the most recent FBI statistics, citizens report some 11 million criminal complaints in one year, and state and local law enforcement officials make some 14 million criminal arrests.

These numbers make another important point. State and local law enforcement officials process the overwhelming majority of all crimes—some 95 percent of all criminal activity. There are good reasons for that. Frankly, they do every bit as good a job as Federal prosecutors.

If we really want to do something about hate crimes, on a Federal level, we should at the least allow for the death penalty so law enforcement and prosecutors can obtain immediate cooperation and guilty pleas, and so defendants will have an incentive to testify against fellow perpetrators, which results in bringing these matters to an end quickly without high costs.

In most cases, the death penalty would probably not be imposed, but the fact that it could be imposed is a very important element in getting to the bottom of a lot of these cases.

We are talking about a very important set of issues. It is nice to be emotional; it is nice to talk about how big our hearts should be. I don't think anyone can claim they have a much larger heart than I have. I have proven it through all the years. The fact is, there is a reason our Founding Fathers wanted State and local law problems prosecuted by State and local prosecutors. They are the people closest to them; they are the people who understand the neighborhoods; they are the people who understand the cities; they are the people who understand the people. They do every bit as good a job as the Federal prosecutors do.

I feel deeply about these matters. I don't want anyone to be hurt by hate crimes. It is not right. No one should care what their orientation is. It is just not right. I have to say, if the State and local law enforcement people were not doing their job, it would be another matter.

My colleague, Senator SMITH of Oregon, cited an incident in Idaho where the victim asked the FBI to step in and assist in the prosecution. They said they could not because there was no applicable federal statute. As I understand it, there is no allegation that the crime was not prosecuted by State officials. In fact, I understand they received a conviction in that case.

A lot of this is based on emotions. I would like to address the issue from a law enforcement basis that makes sense, that really does the job. That is why I filed this amendment on the death penalty, because that is one of the great tools Federal and local prosecutors have. The very fact that they might have to face the death penalty if they roll the dice and go to the jury, it is one of the great tools that forces people to come clean. It is also a great tool in causing others to testify against their co-perpetrators. Take that tool away and I suggest we will be harming the efforts to try to solve the problems of hate crimes and criminal activity.

What is wrong with this bill? It goes way beyond what is necessary and makes almost every case that is now prosecuted at the State and local level a Federal crime. The fact is that almost all crime involves hatred. I know the distinguished Senator from Massachusetts tried to prevent including every rape as a hate crime. But the bill is written so broadly that it looks to me as though they are making all rape cases, all cases with sexual allegations, hate crimes, prosecutable by the Federal Government, even though the State and local prosecutors are totally capable of prosecuting these cases.

I suggest the absence of a quorum.

Mr. SMITH of Oregon addressed the Chair.

The PRESIDING OFFICER. Will the Senator withhold his request?

Mr. HATCH. Yes.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. Madam President, I would like to state for the record my belief that there is not a Senator in the Senate with a bigger heart or better heart than ORRIN HATCH. It is a great privilege to serve with him. He and I just differ about the appropriateness of the Federal involvement.

I think the Federal involvement in the statute we proposed will be minimal, but it will be allowable. It will be rare that the Federal Government is brought in. But, again, it took a Republican from Wyoming, Laramie, WY, the sheriff, to come and tell me, just in a practical way, how helpful it would have been if Federal resources and involvement had been included in the prosecution of the Matthew Shepard case.

If in the case of James Byrd it was appropriate, why not in the case of Matthew Shepard? Moreover, why should we not, at this time in our Nation's history, say to the gay and lesbian community: We care. We do have a big heart. We have a way to include you. And this is the barest of minimums that we ought to do in their behalf.

I think if you are a Navajo gay boy in a lonely Colorado canyon near a small town where local law enforcement is ill-equipped to assure justice is done, that it is entirely appropriate for us now to make available the law enforcement arm and resource and authority of the U.S. Government.

I do not wish to subvert in any way the local law enforcement that is the bulwark against crime in this country. Indeed, that is why we call this the Local Law Enforcement Enhancement Act. We are simply trying to enhance the pursuit and prosecution and punishment of those who would commit the most malignant kinds of crime in America.

At a time when this Nation is in a war against terrorism abroad, it is not inappropriate for us to focus as a Congress upon terrorism committed at home. What happened to Matthew Shepard was terrorism. I think it is appropriate for the Federal Government to say it can help in this instance as well.

So if there are flaws in this bill, let's fix them in conference. But let's advance this bill because it is the right time and it is the right way in which to do it.

Again, I deeply respect the motives of the ranking member of the Judiciary Committee. I know his heart. It is as good a heart as there is in the place. I know he feels as I do when people are victimized. I think he is genuinely trying to find the right procedural way to get the Federal Government involved in helping.

But all you have to do is go to small town America where many of these horrible acts are committed and ask them if they couldn't use the helping hand of the Federal Government. I think they will tell you overwhelmingly: Yes, and it is about time you showed up to help.

So I urge my colleagues to vote for S. 625. Now is the time and it is about time. I yield the floor.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Utah.

Mr. HATCH. I appreciate the remarks of my distinguished friend about the way he feels about these matters. I feel precisely the way he does. We are very close friends. I don't think you can find closer friends in the Senate. I think most people who know me know that I have very deep feelings that no one should be brutalized in our society, regardless of what their sexual orientation is.

But this is a big step. If we take this bill without the death penalty, then we are actually reducing the ability of law enforcement to go after these people and to get cooperation from other witnesses and from co-perpetrators.

One of my favorite programs on television happens to be ''Law and Order.'' If you watch that, you will see the prosecutors regularly use the death penalty as a tool. While fictional, this television show is based substantially on what goes on in real life. Most attorneys who watch the show are pretty impressed with the program. I am one of them. You will notice in many cases that they will use the potential of being subjected to the death penalty to get one or more of the perpetrators to testify against the others. Frankly, it is very effective on this show and in real life.

I, for one, believe that the death penalty should be used only in the most narrow of circumstances. But I believe it is a tool that would certainly help in prosecuting hate crimes. It would certainly help almost every prosecutor who wants to go after violent criminals who act in concert. It certainly helps our State and local prosecutors, and it

would help the Federal prosecutors. But in this particular bill that has been introduced by my distinguished friend from Massachusetts, the death penalty is taken out of the hands of Federal prosecutors.

So all we are doing in this intellectual, political exercise, in many respects, is tying the hands of Federal prosecutors, while immensely expanding the Federal jurisdiction over virtually all crimes that are called ''hate'' crimes—in complete disregard for the fact that 95 percent of all prosecutions are prosecuted at the State and local level, and are prosecuted well.

I know the distinguished Senator from Oregon cited the Bangerter case. The people who attacked Bangerter and hurt him were prosecuted and convicted, as I understand. There are bound to be maybe four or five cases over the last decades that weren't prosecuted. But that doesn't justify giving this wholesale expansion of state authority to the Federal prosecutors.

One of the things I personally chatted about with the current Chief Justice and other Justices on the Court—one of the things I personally discussed with them—is their concern about the continual increase of the number of statutory Federal crimes when there is no evidence that the State and local prosecutors are not doing their job. The amendment I intend to file at a later time, which will be a substitute for the bill of the distinguished Senator from Massachusetts, provides for the tools and the help for those small communities, such as the one in Colorado that distinguished Senator from Oregon referred, to prosecute these crimes.

Although there is no evidence that they can't do it or that they aren't doing it, my amendment makes sure that hate crimes will and can be prosecuted by providing resources.

If my friend from Oregon is truly only concerned with enhancing local law enforcement—this bill, ironically, is called the Local Law Enforcement Enhancement Act. This bill takes away the authority of local law enforcement and puts it in the hands of Federal prosecutors when there is no evidence they need to do that. Nor is there any indication that we should turn over this kind of responsibility to Federal prosecutors, nor that they should have the right to come in and overrule local prosecutors in the process who are doing the job.

If my colleague from Oregon is truly only concerned with enhancement of local law enforcement, I hope he will vote for my substitute which will be offered later in this debate.

That is what my substitute will do—enhance and not supplant local State prosecutors. I will discuss that in detail later, and hopefully we will be able to bring it up and get a time agreement whereby we have a limited number of amendments. And that will certainly be one of them. If we win, we win. If we lose, we lose. But at least we will have debated it, and we will have had a chance to improve this bill by leaps and bounds.

During our last debate on hate crimes, Senator KENNEDY criticized me for arguing against the federalization of hate crimes when I have supported providing Federal jurisdiction in other, completely unrelated areas, such as computer fraud or class actions. This is the classic apples versus oranges argument.

In those other cases, there has never been any serious question that the proposed Federal jurisdiction would be constitutional. I consider every piece of legislation on its own merits.

The distinguished Senator from Massachusetts, a noted opponent of the death penalty, nonetheless has voted in the past for legislation that provides for the death penalty. My conviction that S. 625 is unconstitutional is in no way inconsistent or contradictory.

Whether or not a State may have a specific law prohibiting hate crimes does not mean that they are failing to vigorously prosecute them. Every hate crime, every bit of criminal conduct that S. 625 proposes to federalize is and always has been a crime in every jurisdiction throughout our Nation, crimes which have been effectively prosecuted by State and local prosecutors.

When we challenged the Clinton administration and the then Deputy Attorney General, Eric Holder, to come up with any examples where local prosecutors were not taking care of these problems, they could not do it.

In fact, prosecutors sometimes do not like to charge a crime as a hate crime—especially when the penalties are no different because they have to prove an extra element: The motive of the defendant to commit the crime based on bias. That is an extra element that would have to be proven, and it makes it tough to get convictions in some of these cases.

It is no answer to say that a State may not have a hate crime or may not be charging enough cases under a specific hate crime law. The real question is, Are States failing to prosecute hate crimes? The answer is a resounding no.

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

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

UNANIMOUS CONSENT AGREEMENT—S. RES. 272

Mr. REID. Mr. President, I ask unanimous consent that at 5:45 p.m., today, the Senate proceed to the consideration of S. Res. 272, regarding the delivery of signatures to the Cuban National Assembly; that the substitute amendment be agreed to; and the Senate vote on the resolution, as amended; that following the vote, the amendment to the preamble be agreed to, the preamble be agreed to, as amended, without further action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, I ask for the yeas and nays on the vote.

The PRESIDING OFFICER. Is there objection to it being in order to request the yeas and nays at this time?

Without objection, it is so ordered.

Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

Mr. REID. Mr. President, I also announce, on behalf of the majority leader, this will be the only vote this evening.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

UNANIMOUS CONSENT REQUEST—S. RES. 282

Mr. FEINGOLD. Madam President, in 3 days' time, the United States will withdraw from the 1972 Anti-Ballistic Missile Treaty. And it appears that we will do so without a significant debate on this issue in the Senate. For 30 years, the ABM Treaty has been the foundation upon which our strategic relationship with Russia has rested. So I am troubled that this historic treaty is about to be dissolved without so much as a hearing or even any debate in this body. I also regret that the President made this important decision without consulting with the Senate. I find this troubling on both constitutional and policy grounds.

Article II, section 2 of the Constitution states that the President ''shall have the Power, by and with the Advice and Consent of the Senate, to make Treaties, provided that two thirds of the Senators present concur. * * *'' The Constitution is silent on the process by which the United States can withdraw from a treaty, and the record of the Congress and the executive branch is mixed.

But, the intent of the Framers, as explained by Thomas Jefferson, is clear. In section 52 of Jefferson's Manual, he writes, ''Treaties are legislative acts. A treaty is the law of the land. It differs from other laws only as it must have the consent of a foreign nation, being but a contract with respect to that nation.'' And article II, section 3 of the Constitution states that the President shall ''take Care that the laws be faithfully executed. . . . ''

Jefferson continues, ''Treaties being declared, equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded. This was accordingly the process adopted in the case of France in 1798.'' It is worth noting that four signers of the Constitution were serving in the Congress when this first treaty termination occurred—by an act of Congress—in 1798,

just 11 years after the Constitutional Convention.

So it is clear to me, as obviously it was to Thomas Jefferson, that Congress has a constitutional role to play in terminating treaties. If advice and consent of the Senate is required to enter into a treaty, this body should at a minimum be consulted on withdrawing from a treaty, and especially from a treaty of this magnitude, the termination of which could have lasting implications on the arms control and defense policy of this country. Today the ABM Treaty is the supreme law of the United States. The Senate should not stand by while the administration unilaterally abrogates this treaty.

I am concerned about the message that the Senate's inaction sends to this administration and future administrations about how seriously we will take our constitutional responsibilities with regard to the termination of treaties. As Jefferson noted, a treaty is equal with a law. A law cannot be declared to be repealed by the President alone. Only an act of Congress can repeal a law. Action by the Senate or the Congress should be required to terminate a treaty.

Momentarily, I will seek to bring up a resolution on this issue. The resolution is very simple. It just expresses the sense of the Senate that the approval of the Senate is required to terminate any treaty and states that the Senate shall determine the manner by which it gives its approval to such a proposed termination. Finally, the resolution disapproves of the withdrawal of the United States from the ABM Treaty.

Madam President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 282, which I submitted earlier today, that the resolution be agreed to, and the motion to reconsider be laid upon the table without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. Madam President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FEINGOLD. Madam President, I was not surprised, but I do regret that there has been an objection to the Senate taking up this resolution and expressing its will on this important issue.

I am troubled that the Congress appears willing to cede its constitutional responsibility on this matter to the executive branch. I am concerned about the signal that the Senate's refusal to act sends to the executive branch and what it could mean for the future of other treaties with which this or other administrations may not agree.

The Senate does not grant its advice and consent to ratify treaties lightly, and we should not abrogate our responsibility to express the will of this body on whether the United States should withdraw from treaties. By failing to act on this important issue, we are granting the executive branch undue license to trample on the constitutional prerogatives of the Senate and to blur the separation of powers and system of checks and balances. I am concerned that the Senate's inaction today tips the scales dangerously in favor of the executive branch.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, I would like to be recognized to address the Senate.

The PRESIDING OFFICER. The Senator is recognized.

THE SHAD PROJECT

Mr. NELSON of Florida. Mr. President, over the course of the last few days, I have learned some rather disturbing news about U.S. servicemen being used as human guinea pigs. It is a project that was carried out in the 1970s aboard ships, the ships in the Pacific, a project known by the acronym of SHAD—S-H-A-D. It was basically using various biological and chemical agents to expose our sailors, supposedly, in an attempt to have a readiness should that kind of an attack occur upon our troops. At that time we were still involved in the Vietnam war.

But with the information that I have received, it is unclear if, in fact, the troops—in this case, the sailors—were told about the test and were, in fact, given the appropriate warnings to get the proper protective gear.

The reason this has come to light—and I want to give credit where credit is due—there is a brave and courageous Congressman in California, Congressman THOMPSON, who has been railing about this issue. But it has recently come to my attention because several of those now retired sailors are being notified by the U.S. Government that they should come in and get examined medically, and some of those former sailors are in the State of Florida.

Now, here is the extent of it. There were some 113 tests that were made. The only ones that have been released thus far are some 12 of the 113 tests. According to the sources I have, in those 12, there were a total of 4,300 sailors who were exposed to these chemical and biological agents that were sprayed on or over the ships in the Pacific in the 1970s. Of those 4,300 sailors, only 622 have been notified and have been notified by mail.

By the way, how it came to my attention is 51 of those 622 happen to reside in the State of Florida.

This, in and of itself, portends some very serious consequences for our country. As a member of the Senate Armed Services Committee, I want to know, now some three decades later, that we are contacting these sailors to come in and get checked medically. I want to know the details.

I want to know who were the military personnel, were there any civilian personnel, and were there any substances we should know about so that we could give the kind of medical care that would be important as the U.S. Government ought to be protecting the people, particularly the people who served in uniform trying to protect this country.

When this came to my attention last week, I wrote to the Secretary of Defense and asked him for an explanation. I have written to our wonderful chairman of the Armed Services Committee, Senator LEVIN, and asked him to conduct an inquiry and hearing, if necessary, and if it needs to be classified, then we can operate in the Armed Services Committee in a classified manner to find out what the degree of exposure was and what the degree of medical attention should be in order to protect these American citizens.

If that is not enough, I have also had my suspicions aroused because in the 1950s there was a test going on in the old Boca Raton airbase. This was an airbase that during World War II was a training base for flyers. After World War II, in the 1950s, there was research going on at this particular airfield to develop a toxin that would attack and kill the Soviet wheat crop.

Remember, in the 1950s we were immersed in the cold war. We didn't know what to expect. We had the two nuclear superpowers. We were investigating: Could we develop a toxin that, if the United States were attacked, with which we would be able to attack their agricultural supply.

Why was that done in Florida? Well, we don't raise wheat in Florida. So that is one of the reasons Florida was chosen. But in addition to the Boca Raton location, there were other field tests made not only for wheat but perhaps for other substances that I have been able to find out about just in the State of Florida, in locations such as Belle Glade, Fort Pierce, Avon Park, and Panama City.

A couple of months ago, I wrote to the Department of Defense and asked for information about this matter, along with the same line of inquiry which I have just spoken about with regard to SHAD, the gassing of the sailors in the 1970s. I wanted to know: Were people at risk? Were military personnel exposed? Were civilians exposed? And on the 85-acre parcel to the north of what is now Florida Atlantic University, built on the Boca Raton airport, a part of the old airbase, an 85-acre area to the north where this testing was going on, were there toxins that were dumped there? Were there toxins buried there?

Basically, to my inquiry to the Department of Defense a couple months ago, they said they could not tell me because it was classified. Well, the Senate Committee on Armed Services is not only capable but is quite experienced in handling highly classified matters of the Government. The Defense Department had better be forthcoming to let us know if there is a problem, and if there is, what we are going to do about it.

These two issues have come up in the last few days and have certainly aroused my suspicions. I call on the good offices of the Secretary of Defense, who I think personally is doing a very good job, to see that his organization snaps to and produces the documentation the Senate needs in its oversight capacity.

VARELA PROJECT

Mr. NELSON of Florida. Mr. President, in just a few minutes we will have a vote on a resolution, thanks to the chairman of our Western Hemisphere Subcommittee, Senator DODD, and the chairman of the Foreign Relations Committee. He so graciously, for me, has set this vote in just a few minutes on a resolution that passed out of the Foreign Relations Committee unanimously commending, as a Senate resolution, the very courageous citizens in the country of Cuba who have put their lives on the line by putting their names and addresses on the line under the Cuban Constitution, petitioning for free elections, petitioning for freedom of speech, petitioning for a release of political prisoners, petitioning to move from a state-controlled economy to an economy of free enterprise. Those 11,000 courageous citizens, operating under the Constitution of Cuba, stepped forth under the constitutional provision that says if over 10,000 petition the Government, the Government will take up the matter in the National Assembly to act on those four freedoms I just mentioned.

I want to bring to the attention of our colleagues the fact that these people have put their lives on the line. The Castro government could stop it tomorrow. But today the Senate will send a strong message of support for these courageous citizens of Cuba who are playing by the rules and who want to see the winds of change and the fresh breath of freedom suddenly start to be realized in Cuba.

I am so grateful to the chairman of the full committee and the chairman of the subcommittee that they have brought forthwith so quickly this resolution so that the Senate can stand on record to commend these citizens in Cuba.

I see my colleague, the chairman of our subcommittee, ready to speak. Few people knew about this project called the Varela Project until President Carter went to Cuba. When he had that chance to speak live to the Cuban people by radio and TV, he spoke about the Varela Project and how courageous these folks were. All the people of Cuba now know what it is. Today, the Senate is going to have a chance to go on record to support them.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, there are only a few minutes before the vote. What time is the vote?

The PRESIDING OFFICER. The time is 5:45.

Mr. DODD. I see my colleague from the State of Washington who wants to address another matter. I will be brief.

I commend our colleague from Florida for crafting this resolution, which will be voted on shortly, by the Senate. He is absolutely correct, it did come out of our committee with a unanimous vote.

Mr. President, I rise in support of S. Res. 272. All too often when we have engaged in debate on matters related to Cuba, there have been a great deal of polemics—a lot of heat but very little light shed on the subject matter under debate. That is not the case with the resolution we are considering this afternoon.

I have been critical in the past on various policies the US has pursued regarding Cuba. The audience we ought to listen to most are the people behind the projects like the Varela Project, the people who have stayed in Cuba to try to bring about change there—those who have been incarcerated for 15, 20, 25 years, in some cases longer—because of their political views. Those who have authored this Varela Project deserve a great deal of credit for having the courage to round up 11,000 signatures, which is remarkable considering some of the pressures they will be under.

I commend Senator BILL NELSON of Florida for crafting this resolution. He has attempted to stick to the facts and to keep the spotlight on what is actually happening on the Island of Cuba.

This resolution recognizes a remarkable occurrence—the fact that 11,000 Cubans have petitioned their government for the holding of a referendum on civil, political and economic changes they wish to see. It is also refreshing that, thus far, the government of Cuba has taken no action against the organizers of this effort.

Thanks to the recent visit of former President Jimmy Carter to Havana last month, the Varela project now has international visibility. More importantly, because President Carter's speech, including references to this effort, was broadcast on Cuban TV and radio, and reprinted verbatim in the official Cuban newspaper, the Cuban people are now aware of this as well.

The organizers of Varela have chosen to exercise their rights under the Cuban Constitution to submit legislative proposals to the National Assembly for its consideration. Some in the Cuban exile community have been critical of this effort because they believe it legitimizes the Cuban constitution and therefore it should be opposed. I reject that argument.

For too long we in the United States have tried to tell the Cuban people what is best for them. We did so at the time of Cuban independence from Spain and we did so again during the Batista regime. The result was the 1959 Cuban revolution and the Castro Government.

Let's listen to the voices inside Cuba. Let's listen to those who have stayed in Cuba and sought to change it from within.

Those voices have called for the United States to engage with Cuba. Those voices have called for an end to the travel ban.

If the Carter visit demonstrated anything, it demonstrated that the presence of Americans in Cuba offers opportunities for more political space in Cuba not for shoring up the Castro regime.

Mr. President, the Varela project was inspired by Cuban citizens. These citizens have taken advantage of rights provided to them under the Cuban Constitution. The Cuban government should honor those rights and give serious consideration to this request.

We in the United States should demonstrate self restraint and allow Cubans to retain ownership of this initiative. We need to be careful not to appropriate these internal efforts inside Cuba. If we give it too much of a label of ''made in the U.S.,'' then this project will be hurt and the effort will be hurt. We have been warned repeatedly by dissidents and human rights activists inside Cuba that, too often, if we become associated with efforts there, they are seen as nothing more than tools of United States foreign policy with regard to Cuba. We should try not to give the Castro government any opportunities to suggest that this is just another plot by the United States to attack the Cuban people.

I commend the organizers of the Varela initiative and all who have joined with them in their effort to seek peaceful change in Cuba. I stand ready to listen to their voices and assist them in any way they believe will be helpful in bringing their aspirations to fruition.

What is most important is not what we do, but rather what they are doing in Cuba, what they are showing by their tremendous sense of commitment to democracy and freedom. For those reasons, we are endorsing their effort with this resolution, and I strongly support it and urge its adoption.

I yield the floor.

THE VARELA PROJECT'S COLLECTION OF CERTIFIED SIGNATURES IN SUPPORT OF A NATIONAL REFERENDUM AND THE DELIVERY OF THESE SIGNATURES TO THE CUBAN NATIONAL ASSEMBLY

The PRESIDING OFFICER. Under the previous order, the clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 272) expressing the sense of the Senate regarding the success of the Varela Project's collection of 10,000 certified signatures in support of a national referendum and the delivery of these signatures to the Cuban National Assembly.

The Senate proceeded to consider the resolution, which had been reported from the Committee on Foreign Relations with an amendment and an

amendment to the preamble, as follows:

(The parts of the preamble intended to be stricken are shown in boldface brackets, and the parts of the preamble intended to be inserted are shown in italic.)

S. RES. 272

[Whereas Article 88 of the Cuban Constitution states that the Cuban National Assembly should schedule a national referendum if it receives the verified signatures of 10,000 legal voters;

[Whereas on May 10, 2002, a group of Cuban citizens led by Oswaldo Paya delivered 11,020 verified signatures to the Cuban National Assembly in support of a referendum;

[Whereas Mr. Paya's petition drive is inspired by the 19th-century priest and Cuban independence hero, Padre Felix Varela, and is known as the Varela Project;

[Whereas the Varela Project seeks a referendum on civil liberties, including freedom of speech, amnesty for political prisoners, support for private business, a new electoral law, and a general election;

[Whereas the Varela Project is supported by 140 opposition organizations in Cuba and has received no money or support from foreign citizens or foreign governments;

[Whereas the Varela Project is the largest petition drive in Cuban history;

[Whereas the Varela Project seeks amnesty for all of those who have been detained, sanctioned, or jailed for political motives and who have not participated in acts directly threatening the lives of others;

[Whereas the Varela Project seeks to guarantee citizens the right to form private businesses, to carry out economic activities that could be productive and of service, and to establish contracts between workers and businesses for the development of these businesses in fair and just conditions so that no one may obtain profits by exploiting the work of others;

[Whereas the Varela Project is a step in moving Cuba toward achieving international standards for human rights;

[Whereas the goal of United States policy in Cuba is to promote a peaceful transition to democracy through an active policy of supporting the forces of change on the island; and

[Whereas the Varela Project is engaged in the promotion of a peaceful transition to democracy in Cuba: Now, therefore, be it**]**

Whereas Article 88 of the Cuban Constitution provides for Cuban citizens to submit legislative proposals to the Cuban National Assembly for its consideration;

Whereas on May 10, 2002, a group of Cuban citizens led by Oswaldo Paya delivered 11,020 verified signatures to the Cuban National Assembly in support of a referendum;

Whereas Mr. Paya's petition drive is inspired by the 19th-century priest and Cuban independence hero, Padre Felix Varela, and is known as the Varela Project;

Whereas the Varela Project seeks a referendum on civil liberties, including freedom of speech, amnesty for political prisoners, support for private business, a new electoral law, and a general election;

Whereas the Varela Project is supported by 140 opposition organizations in Cuba and has received no money or support from foreign citizens or foreign governments;

Whereas the Varela Project is the largest petition drive in Cuban history;

Whereas the Varela Project is a step in moving Cuba toward achieving international standards for human rights;

Whereas the goal of United States policy in Cuba is to promote a peaceful transition to democracy; and

Whereas the Varela Project is engaged in the promotion of a peaceful transition to democracy in Cuba: Now, therefore, be it

Resolved, **[**That the Senate—

[(1) supports the constitutional right of the citizens of Cuba who have signed the Varela Project to petition the Cuban National Assembly for a referendum;

[(2) calls on the Cuban government to accept the Varela Project petition and, in accordance with its obligation under Article 88 of the Cuban Constitution, to hold a referendum on civil liberties, including freedom of speech, an amnesty for political prisoners, support for private business, a new electoral law, and a general election;

[(3) praises the bravery of Oswaldo Paya and his colleagues in collecting 11,020 verified signatures in support of the Varela Project;

[(4) calls on the Cuban government to provide its citizens with internationally accepted standards for civil and human rights, and the opportunity to vote in free and fair elections;

[(5) urges the President and his representatives to take all appropriate steps to support the Varela Project and any future efforts by the Cuban people to assert their constitutional right to petition the National Assembly in support of a referendum; and

[(6) urges the President to pursue an action-oriented policy of directly assisting the Cuban people and independent organizations to strengthen the forces of change and to improve human rights in Cuba.

[SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.**]**

That the Senate—

(1) supports the constitutional right of the citizens of Cuba who have signed the Varela Project to petition the Cuban National Assembly for a referendum;

(2) calls on the Cuban National Assembly to give serious consideration to the Varela Project petition in accordance with Article 88 of the Cuban Constitution and to the holding of a referendum on civil liberties, including freedom of speech, an amnesty for political prisoners, support for private business, a new electoral law, and a general election;

(3) praises the bravery of Oswaldo Paya and his colleagues in collecting 11,020 verified signatures in support of the Varela Project;

(4) calls on the Cuban government to provide its citizens with internationally accepted standards for civil and human rights, and the opportunity to vote in free and fair elections; and

(5) urges the President to support the right of the citizens of Cuba who have signed the Varela Project to petition the Cuban National Assembly for a referendum and the peaceful transition to democracy.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the resolution, as amended.

The yeas and nays are ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), the Senator from Iowa (Mr. HARKIN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Maryland (Ms. MIKULSKI), the Senator from Nebraska (Mr. NELSON), and the Senator from New Jersey (Mr. TORRICELLI), are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey (Mr. TORRICELLI) and the Senator from Connecticut (Mr. LIEBERMAN) would each vote ''yea.''

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Ohio (Mr. VOINOVICH), the Senator from Arizona (Mr. MCCAIN), the Senator from Arkansas (Mr. HUTCHINSON), and the Senator from Idaho (Mr. CRAPO), are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS), would vote ''yea.''

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

The result was announced—yeas 87, nays 0, as follows:

[Rollcall Vote No. 146 Leg.]

YEAS—87

Akaka	Domenici	Lott
Allard	Dorgan	Lugar
Allen	Durbin	McConnell
Baucus	Edwards	Miller
Bayh	Ensign	Murkowski
Bennett	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nickles
Boxer	Fitzgerald	Reed
Breaux	Frist	Reid
Brownback	Graham	Roberts
Bunning	Gramm	Rockefeller
Burns	Grassley	Santorum
Byrd	Gregg	Sarbanes
Campbell	Hagel	Schumer
Cantwell	Hatch	Sessions
Carnahan	Hollings	Shelby
Carper	Hutchison	Smith (NH)
Chafee	Inhofe	Smith (OR)
Cleland	Inouye	Snowe
Clinton	Jeffords	Specter
Cochran	Johnson	Stabenow
Collins	Kerry	Stevens
Conrad	Kohl	Thomas
Craig	Kyl	Thompson
Daschle	Landrieu	Thurmond
Dayton	Leahy	Warner
DeWine	Levin	Wellstone
Dodd	Lincoln	Wyden

NOT VOTING—13

Biden	Hutchinson	Nelson (NE)
Corzine	Kennedy	Torricelli
Crapo	Lieberman	Voinovich
Harkin	McCain	
Helms	Mikulski	

The resolution (S. Res. 272), as amended, was agreed to.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

The resolution, as amended, with its preamble, as amended, reads as follows:

S. RES. 272

Whereas Article 88 of the Cuban Constitution provides for Cuban citizens to submit legislative proposals to the Cuban National Assembly for its consideration;

Whereas on May 10, 2002, a group of Cuban citizens led by Oswaldo Paya delivered 11,020 verified signatures to the Cuban National Assembly in support of a referendum;

Whereas Mr. Paya's petition drive is inspired by the 19th-century priest and Cuban independence hero, Padre Felix Varela, and is known as the Varela Project;

Whereas the Varela Project seeks a referendum on civil liberties, including freedom of speech, amnesty for political prisoners,

support for private business, a new electoral law, and a general election;

Whereas the Varela Project is supported by 140 opposition organizations in Cuba and has received no money or support from foreign citizens or foreign governments;

Whereas the Varela Project is the largest petition drive in Cuban history;

Whereas the Varela Project is a step in moving Cuba toward achieving international standards for human rights;

Whereas the goal of United States policy in Cuba is to promote a peaceful transition to democracy; and

Whereas the Varela Project is engaged in the promotion of a peaceful transition to democracy in Cuba: Now, therefore, be it

Resolved,

That the Senate—

(1) supports the constitutional right of the citizens of Cuba who have signed the Varela Project to petition the Cuban National Assembly for a referendum;

(2) calls on the Cuban National Assembly to give serious consideration to the Varela Project petition in accordance with Article 88 of the Cuban Constitution and to the holding of a referendum on civil liberties, including freedom of speech, an amnesty for political prisoners, support for private business, a new electoral law, and a general election;

(3) praises the bravery of Oswaldo Paya and his colleagues in collecting 11,020 verified signatures in support of the Varela Project;

(4) calls on the Cuban government to provide its citizens with internationally accepted standards for civil and human rights, and the opportunity to vote in free and fair elections; and

(5) urges the President to support the right of the citizens of Cuba who have signed the Varela Project to petition the Cuban National Assembly for a referendum and the peaceful transition to democracy.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

Mr. REID. I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent the Senate proceed to a period of morning business, with Senators allowed to speak for not to exceed 5 minutes each.

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

WAR POWERS AND THE CAMPAIGN AGAINST TERRORISM

Mr. FEINGOLD. Madam President, today I would like to address one of the most complicated but ultimately one of the most important constitutional questions confronting this country as we respond to the atrocities of September 11: that is, the question of how America decides to go to war. This is no easy issue, but it is one that Congress is duty-bound to address.

As we know, war powers are purposefully divided under our Constitution. Under Article I, Section 8, Congress has the responsibility to declare war, and to raise and support the Armed Forces. The President, under Article II, Section 2, is the Commander in Chief, which gives him responsibility for leading the Armed Forces. The War Powers Resolution of 1973 fulfills the intent of the Framers of the Constitution by providing a framework for balancing these powers, and thereby ensuring that the collective judgment of both the Congress and the President will apply to the introduction of the Armed Forces into hostilities, or into situations where imminent involvement in hostilities is likely.

In April, I had a chance to chair a hearing in the Constitution Subcommittee of the Judiciary Committee to consider this balance of war powers authority under the Constitution, particularly as we move forward with our fight against terrorism. In the hearing, there was much praise for the respect demonstrated by President Bush, this President Bush, for both the Congress and the Constitution in seeking congressional authorization to respond with appropriate force to the attacks of September 11. The language in that authorization, Senate Joint Resolution 23, paralleled some of the careful oversight provisions contained in the use-of-force resolution that former President Bush obtained before launching Operation Desert Storm in 1991. In those two cases, both Presidents took the important and constitutionally mandated step of obtaining congressional approval for an expansive new military operation. And in both cases, I do believe, congressional support strengthened the President's response.

History demonstrates that respect for our Constitution and for the shared war powers authority of Congress is politically practical. Indeed, as our Founders and many subsequent commentators have recognized, the separation of war powers between the two branches of government wisely forces us to develop a broad national consensus before placing our Nation's young people in harm's way. And as we have seen time and again, the United States is indeed the most formidable military force on this planet, provided our soldiers are entrusted with a clear military goal, and through congressional authorization, with the popular mandate that is needed to back them up.

Senate Joint Resolution 23, which was passed by both Houses of Congress and signed into law by the President in the aftermath of September 11, provides the President with statutory authorization to prevent related acts of terrorism. In adopting the use-of-force resolution, the President recognized that Congress he said, ''acted wisely, decisively, and in the finest traditions of our country.'' The resolution demonstrated that Congress has the capacity to fulfill its constitutionally mandated responsibility, and in so doing Congress can help unify the nation in a time of national crisis.

Under the careful structure of S.J. Res. 23, the President now has statutory authority to prevent future terrorist attacks by responding with force against any nations, organizations or persons responsible for planning, authorizing, aiding or harboring the terrorists who were responsible for the September 11 attack. Now, given the unprecedented nature of the threat, this provides a pretty broad mandate to the President to respond militarily.

But this Congressional action, while admittedly broad, is not a blank check. The Resolution limits the President's authority in two essential respects.

To begin, the authorization is limited to situations where there is a connection to the events of September 11. The hearing in the Constitution Subcommittee considered the scope of such a limitation. As I will discuss at greater length, there was widespread agreement in the hearing that absent a clear finding that a state such as Iraq participated in, aided, or otherwise provided support for those who attacked the United States on Sept 11, the President would not be authorized, under the terms of S.J. Res. 23, to take new military action against Iraq. Senate Joint Resolution 23 does not provide unlimited authority to the President to take military action against all bad actors. At the same time, the authorization does foresee broad actions against those responsible for the September attack on the United States.

It is also important to recognize that S.J. Res. 23 states in no uncertain terms that the 1973 War Powers Resolution will continue to apply to our military operations against terrorism. This conforming language is identical to Public Law 102–1, which provided the authorization to use military force to oust Iraq from Kuwait in 1991. In all cases, the War Powers Resolution requires the President to consult with Congress on an ongoing basis on the status, scope, and duration of the hostilities. These consultations need not and should not provide Congress with what would be somehow a meddlesome and unacceptably dangerous role in determining tactical aspects of an active military campaign. But the required consultations must nonetheless assist Congress in its continuing responsibility to evaluate and make ongoing decisions about the broad objectives of an unfolding military operation.

The war powers consultations to date, in my view, have been inadequate. While the administration has taken significant steps to increase the frequency of briefings for Members of Congress, and we do appreciate that those consultations have been conducted as informational briefings, with little opportunity for substantive policy discussions or meaningful give-and-take. As such they do not in most cases reach the threshold level of consultations under the terms of the War Powers Resolution.

The House Report on the 1973 War Powers Resolution notes that ''a considerable amount of attention was given to the definition of consultation.

Rejected was the notion that consultation should be synonymous with merely being informed. Rather, consultation in this provision means that a decision is pending on a problem and that Members of Congress are being asked by the President for their advice and opinions and, in appropriate circumstances, their approval of action contemplated.'' The increasingly frequent meetings with Secretary Rumsfeld, Secretary Powell, and others, while welcome and appreciated, do not reach this level of consultation.

In addition, under the War Powers Resolution, the need for additional notification is triggered whenever U.S. Armed Forces are equipped for combat and introduced into a new foreign territory, or if additional Armed Forces are equipped for combat and introduced in numbers that substantially expand existing, previously authorized troop strengths. This is obviously relevant to some of the concerns coming up today.

These and other requirements do not apply to military training exercises, which is why the President must be clear about the precise role of U.S. forces in a number of ongoing counterterrorism training exercises in different countries. These requirements do not apply to that. In some cases, these counterterrorism training programs may cross the line into counterterrorism combat support, which would trigger the War Powers Resolution. So the President must provide clear information to help distinguish between these two types of antiterrorism activities. United States interests are not served through a shortsighted attempt to dodge congressional oversight by characterizing counterterrorism support as routine military training.

In the hearing before the Constitution Subcommittee, we also discussed the important provision within the War Powers Resolution that recognizes the immediate flexibility provided to the President to introduce U.S. Armed Forces into hostilities in the case of a national crisis created by an attack on the United States, or its territories, possessions, or Armed Forces. This provides the President with the flexibility to respond immediately to defend United States interests during an emergency.

But again, this is a limited exception. The War Powers Resolution specifically requires the President, ''in every possible instance,'' to consult with Congress before introducing Armed Forces into situations where hostilities appear imminent. And even within this exception for emergency situations, the President must still seek congressional authorization within 60 days to sustain the operation.

My conclusion from the hearing on war powers authority within the context of our fight against terrorism is that to date the President has shown respect for Congress in seeking authorization to respond to the attacks of September 11. But the ongoing level of consultation on our military campaign has not been adequate. In particular, additional attention must be given to the distinction between counterterrorism training and counterterrorism support for foreign troops during these consultations. It is clear that our national interests would be well served by sustained and forthright consultations between Congress and the President over these aspects of our military response to September 11.

The hearing also touched on one of the most important military decisions on the horizon. Several witnesses questioned the authority of the President to take military action against Iraq. The witnesses generally assumed that any strike against Iraq would be designed to defend the United States against Iraqi weapons of mass destruction, and that the President would not assert a direct link between Iraq and the September 11 attacks. As I have indicated, absent such a link between Iraq and September 11, witnesses suggested that the President might advance two legal justifications for taking up arms against Iraq without further, additional congressional authorization. But both justifications ring hollow, and rest on highly questionable legal grounds.

During the hearing, a witness from the Justice Department joined other witnesses in highlighting the authority of the President to launch military attacks as a form of preemptive self-defense. This expands the national emergency exception under the War Powers Resolution by asserting that the President must have the authority to act quickly and decisively to prevent a potential attack on United States interests. Now, few would disagree with the assertion that the President must have the authority to launch a preemptive strike in advance of an imminent attack on the United States. This understanding I think fits within the overall spirit and intent of the 1973 War Powers law, and it would be irresponsible to suggest otherwise. But the preemptive self-defense argument does not necessarily fit squarely with the situation in Iraq today.

Various press reports suggest that President Bush is considering plans for a new military campaign against Iraq sometime next year. If the President does plan to take such action next year, there is still plenty of time for the administration to initiate meaningful consultations with Congress over the necessity and scope of this new military campaign.

Some have also argued, unconvincingly to me, that consultation with Congress would be impossible because a preemptive strike against Iraq would require a high degree of stealth. But the administration has already spoken publicly of the need for regime change in Iraq, and unnamed officials have consistently leaked information to major news sources describing the scope of the proposed operation.

Moreover, it is now widely assumed that the operation would require a robust ground assault, and that our military build-up in the region would be both deliberate and plainly obvious to any careful observer. So this would not be a purely stealth operation. There would be ample time for congressional consultation as we move forward with fairly obvious military preparations for such a large offensive.

The second argument that is sometimes advanced to support a future military operation in Iraq is that Public Law 102–1, authorizing the use of force in 1991 to respond to Iraq's invasion of Kuwait, still provides ongoing congressional authorization for a major new strike against Iraq. Now, this is a more complex legal argument, but it fails on both legal and public policy grounds. To begin, the congressional authorization for Operation Desert Storm authorizes the President to use military force pursuant to United Nations Security Council Resolution 678. The clear intent of the Security Council in adopting Resolution 678 was to free Kuwait from Iraqi occupation, not to bring about regime change in Iraq. Moreover, United Nations Security Council Resolution 687 implemented a final cease-fire between Iraq, Kuwait and the United Nations Member States that participated in Operation Desert Storm. Although Iraq has certainly failed to comply with the terms of the cease-fire, that failure does not in itself provide automatic authority for the President to launch a significant new military campaign, with the entirely new objective of regime change in Baghdad.

My conclusion, then, is that absent a clear finding that Iraq participated in, aided or otherwise provided support for those who attacked the United States on Sept 11, the Constitution requires the President—it requires the President—to seek additional authorization before he can embark on a major new military undertaking in Iraq.

Since it is clear that Iraq has not adequately complied with weapons of mass destruction resolutions adopted by the Security Council, and that the Iraqi leadership continues to commit gross human rights violations against its own people while encouraging terrorist attacks abroad, the consultation and debate over our response to an Iraqi threat may well convince a majority in Congress that the United States must in fact take all necessary steps, including military action, to limit Iraq's capacity to produce weapons of mass destruction. My guess is that such a resolution would succeed, after a good Congressional debate. If this emerges as the shared decision of Congress and the President, the President would act from a strong and constitutionally unified position in launching a new military campaign. Indeed, the Constitution and the American people must demand such a unified response.

Why would I raise these issues today? Why are these war powers questions so

important? Why should following the letter of the War Powers Resolution be so important in the midst of this national crisis? I think it should because Congress and the President have a chance to carry out their duties with regard to war and peace in the way the War Powers Resolution dictates, and also in the way the Framers of the Constitution intended.

That kind of cooperation preserves our constitutional structure. It also increases the moral authority of the President to act forcefully. Given the unprecedented nature of the threats confronting us, and the complex environment within which we must respond to those threats, a powerful and constitutionally unified response remains essential. We must also remember that constitutional unity presents both a stronger international image of the United States to our friends and foes, and, at the same time, a more comforting image of U.S. power to many of our close allies in the campaign against terrorism. When we best honor our Constitution and our laws as they relate to the powers of war and peace, we also best prepare our Nation to defend that Constitution and those laws. We owe our Nation no less.

I thank the Chair, and I yield the floor.

AMERICA'S COMMITMENT AGAINST BIOTERRORISM

Mr. FRIST. Madam President, our vulnerability to a bioterrorist attack was highlighted by the events that unfolded last October, when anthrax took the lives of innocent Americans and put thousands more in jeopardy. How we address our vulnerabilities and respond to bioterrorism will be radically improved as a result of new legislation signed by President Bush. The greatest tool that terrorists have in their arsenal is to play on America's vulnerabilities and fears. This legislation makes great strides to significantly improve our ability to respond to bioterrorist threats. Yet it is critical that we provide the appropriate information so that families can prepare and protect themselves in the event of a potential attack. Information is power, and by better preparing ourselves, we can avoid being paralyzed by fear.

Many news organizations have already begun to do their part by providing the necessary information for communities to feel safe. Good Housekeeping, which is read by thousands of readers each month, is a good example. In its April edition, Good Housekeeping answered the questions readers often have about bioterrorism, gave suggestions families could use to protect and prepare themselves, and provided information on what Congress is doing to lessen our vulnerability to bioterrorist attack. The magazine went a step further by providing a form readers could fill out urging Congress to act quickly to address bioterrorism. I was pleased that thousands of readers did respond with their views on this issue and the importance of passing legislation that would keep American families safe.

Last fall's anthrax attacks changed the way America looked at bioterrorism. Overnight, the fear of bioterrorism moved from a remote possibility, to a reality for which we must be prepared. The bioterrorism bill, which will soon be signed into law, will greatly improve our ability to respond to a biological threat, equipping communities with the tools they need to strengthen our local health centers and educate those first responders, the doctors, nurses and emergency personnel on the front lines. But information for the general public is also key to improving our readiness. I commend the many news organizations that have recognized this fact and continue to get Americans the information they need to feel safe and secure. The unique nature of terrorism requires all of us to work together. While the events of September 11 and the subsequent anthrax attacks have changed the world we live in, coming together to meet a common challenge remains the American way.

ADDITIONAL STATEMENTS

ESTONIA'S ROLE IN THE HOLOCAUST

• Mr. SMITH of Oregon. Mr. President, I ask that an article written by the U.S. Ambassador to Estonia, Joseph M. DeThomas, be printed in the RECORD. Ambassador DeThomas outlines important steps for the Estonian government to undertake to address Estonia's role in the Holocaust.

The article follows.

PAST, PRESENT AND FUTURE

(By Ambassador Joseph M. DeThomas)

In every interview I have had with the press since I arrived in Tallinn, I have been asked in one form or another, ''What has surprised you about Estonia?'' I have always answered by noting that some aspect or another about Estonia was even more positive than I expected. Early May, however, I was surprised in a different way. A report in a Russian weekly claiming that Simon Wiesenthal advocated a boycott of the Baltic States and Ukraine produced a firestorm of comment from the press, political circles, and some members of the public. The comments were angry, defensive, and—with regard to my government's position—erroneous. The Wiesenthal Center has categorically denied that Mr. Wiesenthal ever even gave this interview. I did not intervene in this discussion. Since arriving here, I have learned a very useful Estonian proverb, ''Think nine times, speak once.'' I have used the intervening days since the story broke to think nine times about the past and what would be useful to do about it in the present. I would like to share my views.

First, let me make clear my own government's position. We believe there is more for all of us to do to deal with the crimes of the past, and the Holocaust is a crime of unique proportions. A prominent political leader here implied last week that the United States is satisfied that Estonia has done all it needs to do to deal with the Holocaust. Just last month, however, Heather Conley, the Department of State's senior official responsible for the Baltic States called on the Baltic States to do more to deal with the damage from the Holocaust. The same is the case for the U.S. Senate. For example, recently, Senator Biden, the Chairman of the Senate Foreign Relations Committee, made a very strong statement about his concern about the resurgence of anti-Semitism in Europe and called on all countries aspiring to NATO membership to ensure that ''the very ugly remnants of war-time fascism . . . be totally and permanently suppressed.''

Estonia's World War II past was uniquely painful. The country and its people were not given the freedom to choose between good and evil. Terrible choices had to be made. Estonia suffered terribly under two periods of Soviet occupation as well as the Nazi German occupation. The fact that the Soviet occupation did more direct harm in Estonia, however, does not negate the fact that the Holocaust happened here too. As the conclusions of the Estonian International Commission for Investigation of Crimes Against Humanity demonstrated, some Estonians bear responsibility for participating in this evil. I believe all countries that lived through the nightmare of the last century need to deal with their crimes honestly and completely so that they cannot be repeated in the future. We must face history, not hide from it.

What does this mean with regard to Estonia's approach to the Holocaust? I suggest the following very modest steps:

1. Do justice where justice is needed. Since reindependence, no Estonian has been prosecuted for crimes committed during the Holocaust. In part, that may be because many were prosecuted during the Soviet period. But, there are still Estonian candidates for prosecution. These individuals should be pursued with the same vigor with which the state still pursues those suspected of Soviet crimes. And the time for this is now. The World War II generation is passing from the scene. Witnesses to the crimes are dying. Both the victims and the victimizers should see justice done before it is too late.

2. Recognize the Holocaust is part of Estonia's history. Compared to the other Baltic States, the states of Central Europe and even some neutral states during World War II, the Holocaust is less recognized as a part of the national history in Estonia. The Holocaust took place here. About one thousand Estonian Jews and even more non-Estonian Jews were murdered in this country. Yet, the day of remembrance for the Holocaust, Yom Hashoah, receives almost no notice in this country. Many sites involving Holocaust crimes here are not marked or remembered. A few sites have recently been commemorated. This should continue.

3. Teach our children about the past. I have been told Estonian school textbooks treat the Holocaust in about one-and-a-half pages. If this is true for most of Estonia, I would suggest that history texts on this subject already in other states in this region be translated into Estonian for use here. I understand such a step is already under consideration by the government. I hope that the Estonian Government follows the call of some Estonian NGO's to be more involved in the Task Force for International Cooperation on Holocaust Education, Remembrance and Research, to which 11 nations belong.

The evil of racism and anti-Semitism does not grow again and again because the decent majority advocates it actively. It returns because it is ignored or trivialized by the majority until it reemerges in a new generation. Estonia has emerged from a desolate past into a present full of promise, thanks to the work of its people. But, to ensure a positive future, I believe it essential that the

country address all aspects of the past soberly, respectfully, honestly and with justice.●

TRANSITION TO DIGITAL TELEVISION

● Mr. CLELAND. Mr. President, I rise today to direct my colleagues attention to the technological changes and developments going on in the television industry. Many people have said that the transition from analog to digital television broadcasts is the biggest innovation in TV since color television. Having seen a digital broadcast, it is as if you are watching the program or sporting event in person. I believe consumers will want to bring this technology into their homes.

I do not believe that we have yet discovered the full use of digital broadcast signals, but I do know that it has the potential to change the way people interact with their TVs. Imagine being able to participate in realtime with a game show on television or being able to ''chat'' with other viewers from around the country during a show. DTV may provide the platform for a more interactive television experience.

I am particularly interested to see how these technologies can be employed to allow local stations to better serve local communities. For the past half-century, local broadcasters have provided valuable services to their local communities. When disasters strike, important, life saving information is often disseminated over the airwaves. Local stations also keep residents informed of community political issues, thereby engaging citizens in the local democratic process.

Since its inception, the broadcasting industry has been founded on two important concepts: the idea of localism and the idea that broadcasting should be free, and over-the-air. I am proud to say that a number of Georgia stations are working to ensure that they continue to serve local communities with free, over the air signals in the digital era.

In my state, we have digital television stations up and broadcasting in four communities. In Atlanta seven stations have digital signals on the air: WAGA, WATL, WGCL, WPXA, WSB, WTBS, and WXIA. In Savannah WTOC is on the air in digital; in Augusta WFXG and WRDW–TV are broadcasting in digital, and in Columbus, WLTZ and WXTX are serving Georgia viewers with digital television. These Georgia broadcasters have taken the next step in television, and for that I commend them. The transition to digital can be expensive, particularly for smaller stations.

To broadcast in digital, these businesses have invested in new transmission equipment and, in some cases, new broadcast towers. If they choose to produce their own digital content, like digital local news, they must invest in digital cameras and editing equipment. Finally, once their digital signal is on-the-air, the stations must pay the bills to transmit two signals simultaneously to ensure viewers can receive both a digital and analog broadcast.

Despite the expenses, these Georgia stations have recognized that digital television is the future. I am confident that their investment in digital television will pay off and I commend them for leading the digital television charge.●

TRIBUTE TO THE CARDINAL CHAPTER OF THE AMERICAN RED CROSS

● Mr. BUNNING. Mr. President, today I thank and honor the Cardinal Chapter of the American Red Cross of Henderson, Kentucky for the selfless and tireless work they performed in aiding the victims of the April 28th tornado which tore through Webster County, Kentucky.

Early Sunday on the morning of April 28th, an F3 classified tornado, with winds up to 200 miles per hour, violently forced its way through Providence, KY hitting at least 114 homes, completely destroying 32. In the end, 26 people were taken to the hospital. In just a few moments, Mother Nature had struck a blow against this normally quiet and peaceful town. People were left without homes and without adequate clothing and food supplies. They were also left without a sense of hope. However, this empty and lonely feeling would be short-lived. Volunteers from the Cardinal Chapter of the American Red Cross of Henderson, KY arrived on the scene just a few hours after the tornado passed through Providence.

Once on the scene, these volunteers wasted no time in setting up two shelters in Providence, providing victims with a roof, a hot meal, and a shoulder to cry on. They also sent food trucks to the nearby town of Irvington once they found out its residents were still without electricity hours after the storm had passed. Without the immediate assistance of the American Red Cross, many would have been left hungry without a home or clothing.

I aks that my fellow colleagues join me in thanking these men and women for their unwavering dedication and commitment to their fellow citizens. They willingly gave up their time and left their families in order to be there physically and emotionally for people they have never met before. I believe we all can learn something from their exemplary behavior. Sometimes it takes the worst to bring out the best, and I think this was the case on April 28.●

HONORING SOUTH CAROLINA'S DEBORAH CHAMBERS

● Mr. HOLLINGS. Mr. President, I want to pay tribute to an outstanding resident of South Carolina, Deborah A. Chambers. Ms. Chambers will soon complete her year as national president of the American Association of Nurse Anesthetists, AANA. I am pleased one of our state's own was tapped as the 2001–2002 president of this prestigious organization.

The AANA represents 28,000 practicing Certified Registered Nurse Anesthetists. They administer more than 65 percent of the anesthetics given to patients each year in the United States. They provide anesthesia for all types of surgical cases and are the sole anesthesia provider in over two-thirds of rural hospitals.

Debbie has been a nurse anesthetist since 1981. She received both her anesthesia training and master's degree at the Medical University of South Carolina, in Charleston. She has been a solo practitioner since 1993 at the Microsurgery Center in Anderson, as well as in both the Greenville Memorial Medical Center and the Saint Francis Bon Secours Hospital System in Greenville. She also was the Clinical Coordinator at the Medical University of South Carolina School of Nurse Anesthesia at Greenville Memorial Medical Center from 1988–2000. Even with her demanding schedule, she has continued to be active on pharmaceutical advisory panels to advance the practice of anesthesia.

Debbie has held various leadership positions in the AANA, and has used her experience and knowledge to help others. I ask my colleagues to join me in saluting Deborah Chambers.●

TRIBUTE TO THE THIRD RECONNAISSANCE BATTALION

● Mr. LIEBERMAN. Madam President, I rise today in recognition of the dauntless history, honor, and tradition of the 3rd Reconnaissance Battalion, U.S. Marines, whose lineage traces back nearly 60 years of valiant service to our great Nation.

The contribution of the 3rd Reconnaissance Battalion is embodied in the sign placed on top of the Battalion Mess Hall at Camp Reasoner which reads: ''We Lead the Division—Where the Division Goes We've Been!''

While enjoying brief periods of respite, it was formed in September 1942. It was sent immediately to the Pacific Theater and participated in World War II campaigns at Bougainville, Solomon Island, Guam, and Iwo Jima. It was reactivated in March 1952 and deployed to Camp Gifu, Japan and later to Camp Hauge, Okinawa. Being reactivated again in April 1958, it was assigned to the 3rd Marine Division, Fleet Marine Force. During Vietnam the unit was highly decorated with four Medals of Honor, 13 Navy Crosses, 86 Silver Stars, and many Purple Hearts awarded to Marines and Sailors. Additionally, the unit itself was awarded President Unit Citations, the Navy Unit Commendation, the Meritorious Unit Commendation, and earned other praise and recognition, as well.

While the 3rd Reconnaissance Battalion has existed under different designations, its adherence to whatever

mission assigned is without question. We cannot take lightly their meritorious service to our Nation. Nor, can we ever forget their admirable and routinely valiant actions both individually and collectively. They were not only pivotal to a successful combat effort, but to establishing and maintaining the legacy for which the 3rd Reconnaissance Battalion may be justifiably proud.

I join in expressing the respect, admiration, and grateful appreciation of our nation as members of the 3rd Reconnaissance Battalion Association gather for their reunion next month in Arlington, VA.●

FDA CONSOLIDATION AT WHITE OAK

● Ms. MIKULSKI. Mr. President, I rise today to urge my colleagues to continue to work for full funding of the Food and Drug Administration, FDA, consolidation and improvement at White Oak, MD in fiscal year 2003. I strongly believe that ensuring the safety of America's food and drug supply is a matter of national security. Yesterday, Senator HATCH and I offered then withdrew an amendment that we hoped would have provided the funding needed for this project which is vital to ensure the safety of America's food and drug supply. We are told that the our amendment would have increased the cost of the homeland security supplemental appropriations bill. However, we have been assured that Senators DORGAN and CAMPBELL, the chair and ranking members of the Treasury General Government Appropriations Subcommittee, are committed to looking at trying to help to continue to find a way to fund the FDA consolidation at White Oak as a part of the fiscal year 2003 appropriations process.

Why is completing this project vital? FDA's mission is to review and regulate more than $1 trillion worth of products, many of which are vital to human health. FDA cannot fulfill its mission because FDA has to work in obsolete facilities that are not equipped to handle today's advanced laboratory and administrative functions. Currently, over 6,000 FDA employees are scattered among 40 different buildings at 20 different locations in the Greater Washington, D.C. area. These facilities are being consolidated into one integrated facility at the former U.S. Naval Surface Weapons Center. Not only will the consolidation greatly improve FDA's operating efficiencies, but timely construction of the new facilities also will save approximately $32 million per year in commercial lease costs. We need consolidate FDA on one campus, just like the NIH and the CDC, in order for the FDA to take its place alongside these institutions as a world class health and food research and safety facility.

What is FDA's role in national security? The recent anthrax attacks on U.S. citizens have heightened FDA's critical role in ensuring the safety of our food and drug supplies. Indeed, the FDA is on the front lines of this effort and must have proper, modern facilities to enable them to best perform their mission. The consolidation will provide state-of-the-art laboratories and facilities for that mission.

What is the status of the project? Congress has already appropriated $146 million for the first phases of this vital project, fiscal year 2000, $35 million; fiscal year 2001, $92.1 million; fiscal year 2002, $19.06 million. Construction has started on phase I, the laboratory for FDA's Center for Drug Evaluation and Research. However, approximately $450 million is still needed to complete this vital project.

Why is full funding important? This project has already been delayed due to funding cutbacks. If the General Services Administration's fiscal year 2003 construction request for FDA consolidations is not fully funded, completion of the consolidation will be delayed even further. These delays will add considerably to the overall cost of the project due to inflation and other factors. For example, scheduled to be constructed in phase III is the Center for Devices and Radiological Health, CDRH. The CDRH laboratories are badly in need of improvements, but FDA has been holding off such work in anticipation of building new laboratories as part of the consolidation. Further delay, we are advised, would likely necessitate FDA's spending several million dollars renovating the existing CDRH laboratories. These would be non-recoverable costs.

What is the next step? We hope that your colleagues will agree that, from the perspectives of public safety and fiscal responsibility, we can not afford to delay the timely completion of this project. We hope that our colleagues will support full funding for FDA consolidation in fiscal year 2003. I look forward to continuing to work with my colleagues, Senators HATCH, DORGAN, and CAMPBELL toward completing this project which will provide better security of two of the most essential daily needs of all Americans, our food and drugs.●

TRIBUTE TO JIM MAYER

● Mr. CLELAND. Mr. President, today I pay tribute to a man whose leadership is only surpassed in value to me by his friendship. Twenty-five years ago, Mr. Jim Mayer played an important role in the creation of an innovative pilot program called ''Leadership VA.''

The program is designed to identify 70 leaders in the Department of Veterans Affairs each year, and to provide an enrichment of their career development through an intense leadership training experience. In its 25 years of existence, Leadership VA has laid a foundation for a network of VA leaders who share a deep commitment to the Department of Veterans Affairs and to public service in its broadest sense. Today, 63 percent of all Central Office Senior Executive Service members have completed the program, as have 73 percent of all field leaders.

This success, though, did not happen by chance. Rather, it is a tribute to the hard work and forward thinking of Jim Mayer. Jim began his VA career as Special Assistant for Vietnam Veterans Affairs to Administrator Richard L. Roudebush in 1974, six years after beginning his service in the U.S. Army as an infantry man in the 25th Division in Vietnam.

Jim joined the Leadership VA staff as its Executive Director in April of 1998, but his relationship with LVA goes back to his time on the first Selection Committee in 1978.

Throughout his years at the VA, Jim has spent countless hours working on behalf of veterans, striving to better conditions by improving the VA from within, but his accomplishments are not limited to his time at the VA. He is a recipient of numerous awards including: 1977, VA Meritorious Service; 1981, VA Exceptional Service; 1991, Secretary of Veterans Affairs Outstanding Volunteer; and, 1993, George Washington Honor Medal from the Freedoms Foundation at Valley Forge for work as a volunteer with Desert Shield/Desert Storm injured at Walter Reed Army Medical Center.

For as long as I have known him, Jim Mayer has exemplified the term ''public servant.'' He is a selfless individual who has always thought of his country before thinking about himself. In this day and age, few people live that type of life, but, as President Theodore Roosevelt said, ''The test of our worth is the value of our service.''

I would like to thank Jim for his service, his dedication, and, above all else, for his friendship. He is an inspiration and a great American.●

CHAPLAIN TONY FIRMAN RETIRES FROM FLANDREAU INDIAN SCHOOL

● Mr. JOHNSON. Mr. President, I rise today to recognize and honor Chaplain Tony Firman on the occasion of his retirement as Chaplain at the Flandreau Indian School in Flandreau, SD.

Chaplain Firman has completed 35 years as Chaplain at Flandreau Indian School. After receiving his training at Blue Cloud Abbey in Marvin, South Dakota, Tony served at Flandreau Indian School as Student Coordinator of Religious Activities, a boys counselor, and as a religious liaison between the students, staff and administration, area churches and the Flandreau community.

He was selected as Flandreau Indian School Chaplain by representatives from the Association of Christian Churches, which is made up of representatives from each of the following denominations: United Presbyterian Church, United Church of Christ, United Methodist Church, Lutheran

Church in America, Episcopal Church, Catholic Church, Rapid City and Sioux Falls Dioceses, Reformed Church in America, and Christian Church Desciples. The Flandreau Chaplaincy program was the first project to be sponsored by the Association of Christian Churches.

On the occasion of his retirement as a school Chaplain, I want to congratulate Tony Firman for his tireless dedication to Flandreau Indian School, his commitment to finding the best in students, for helping others with spiritual guidance, and for coordinating and supporting religious activities. I also commend him for his valuable service to the community over the years.

The lives of countless young people have been enormously enhanced by Tony's talent and skill as Chaplain. The State of South Dakota is a better place because of his commitment to and passion for working with local youth. His achievements will certainly serve as a model for other talented religious leaders throughout our State to emulate.

I wish Tony Firman the best on his retirement.●

HONORING THE LADY GAMECOCKS FOR WINNING THE NCAA TRACK TITLE

● Mr. HOLLINGS. Madam President, my colleagues who have heard me debate fast track trade negotiating authority in the last month may be surprised with what this senator from South Carolina is about to say. But I rise today wishing to scream my lungs out in favor of fast track that is the fast track of the University of South Carolina women's track and field team, who just won the NCAA title earlier this month. It only goes to show you that fast track is alive and well in my state, so long as it's the right fast track.

I have followed Gamecock sports for more than seven decades. This day is particularly pleasing in that, as hard as this is to believe, it is the first time South Carolina was won a national championship ever, in any sport, women's or men's.

I wish to congratulate the entire team of incredible athletes who worked hard all year to prepare for this. They won relays. They won individually. They set new records, piling up points with depth in several of the events. It was a real team effort, as it should be.

I especially want to congratulate the Gamecock coach, Curtis Frye, who recruited all these talented women and turned the program into a true powerhouse. He was just named the women's track coach of the year, and us faithful will obviously expect him to win that title every year now.

One last point, as the Gamecocks are showing their best ever performances on the field, they also are showing their best ever performances in the classroom. It is important that we have champions across the board, in academics and athletics, and I salute all University of South Carolina athletes who have improved their academic performance.●

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar.

H.R. 2143. An act to make the repeal of the estate tax permanent.

S. 2600. A bill ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, without amendment:

S.J Res. 34: A joint resolution approving the site at Yucca Mountain, Nevada, for the development of a repository for the disposal of high-level radioactive waste and spent nuclear fuel, pursuant to the Nuclear Waste Policy Act of 1982. (Rept. No. 107–159).

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 Mrs. CLINTON (for herself and Mrs. HUTCHISON):

S. 2602. A bill to amend title 38, United States Code, to provide that remarriage of the surviving spouse of a veteran after age 55 shall not result in termination of dependency and indemnity compensation; to the Committee on Veterans' Affairs.

By Mr. DODD (for himself and Mr. JEFFORDS):

S. 2603. A bill to establish the Digital Opportunity Investment Trust; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ENZI:

S. 2604. A bill to amend the Endangered Species Act of 1973 to require the Federal Government to assume all costs relating to implementation of and compliance with that Act; to the Committee on Environment and Public Works.

By Mr. DASCHLE (for Mr. HARKIN (for himself and Mr. CRAIG)):

S. 2605. A bill to amend title XVIII of the Social Security Act to geographically adjust the amount of the medicare part B premium based on the use of health care items and services in the State in which the medicare beneficiary resides, and for other purposes; to the Committee on Finance.

By Mrs. BOXER:

S. 2606. A bill to require the Secretary of Labor to establish a trade adjustment assistance program for certain service workers, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FEINGOLD:

S. Res. 282. A resolution disapproving the withdrawal of the United States from the 1972 Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems (ABM Treaty), signed in Moscow on May 26, 1972 (Ex. L. 92–2); to the Committee on Foreign Relations.

By Mr. SPECTER (for himself and Mr. SANTORUM):

S. Con. Res. 120. A concurrent resolution commending the Pennsylvania National Guard for its exemplary service to the United States in the war against terrorism and other recent documents; to the Committee on Armed Services.

ADDITIONAL COSPONSORS

S. 237

At the request of Mr. NICKLES, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 237, a bill to amend the Internal Revenue Code of 1986 to repeal the 1993 income tax increase on Social Security benefits.

S. 399

At the request of Mr. EDWARDS, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 399, a bill to provide for fire sprinkler systems, or other fire suppression or prevention technologies, in public and private college and university housing and dormitories, including fraternity and sorority housing and dormitories.

S. 701

At the request of Mr. BAUCUS, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 701, a bill to amend the Internal Revenue Code of 1986 to provide special rules for the charitable deduction for conservation contributions of land by eligible farmers and ranchers, and for other purposes.

S. 913

At the request of Ms. SNOWE, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 913, a bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of all oral anticancer drugs.

S. 999

At the request of Mr. BINGAMAN, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 999, a bill to amend title 10, United States Code, to provide for a Korea Defense Service Medal to be issued to members of the Armed Forces who participated in operations in Korea after the end of the Korean War.

S. 1115

At the request of Mr. REID, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 1115, a bill to amend the Public Health Service Act with respect to making progress toward the goal of eliminating tuberculosis, and for other purposes.

S. 1483

At the request of Mr. WELLSTONE, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1483, a bill to amend Family Violence Prevention and Services Act to

reduce the impact of domestic violence, sexual assault, and stalking on the lives of youth and children and provide appropriate services for children and youth experiencing or exposed to domestic violence, sexual assault, or stalking.

S. 1523

At the request of Mrs. FEINSTEIN, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1523, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S. 1648

At the request of Mrs. LINCOLN, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 1648, a bill to amend title 38, United States Code, to provide an increase in the maximum annual rates of pension payable to surviving spouses of veterans of a period of war, and for other purposes.

S. 1864

At the request of Mr. REID, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 1864, a bill to amend the Public Health Service Act to establish a Nurse Corps and recruitment and retention strategies to address the nursing shortage, and for other purposes .

S. 2005

At the request of Mr. LUGAR, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 2005, a bill to authorize the negotiation of free trade agreement with the Republic of the Philippines, and to provide for expedited congressional consideration of such an agreement.

S. 2108

At the request of Ms. STABENOW, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2108, a bill to amend the Agriculture and Consumer Protection Act of 1973 to assist the neediest of senior citizens by modifying the eligibility criteria for supplemental foods provided under the commodity supplemental food program to take into account the extraordinarily high out-of-pocket medical expenses that senior citizens pay, and for other purposes.

S. 2135

At the request of Mr. BAUCUS, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2135, a bill to amend title XVIII of the Social Security Act to provide for a 5-year extension of the authorization for appropriations for certain medicare rural grants.

S. 2210

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 2210, a bill to amend the International Financial Institutions Act to provide for modification of the Enhanced Heavily Indebted Poor Countries (HIPC) Initiative.

S. 2221

At the request of Mr. ROCKEFELLER, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2221, a bill to temporarily increase the Federal medical assistance percentage for the medicaid program.

S. 2428

At the request of Mr. KERRY, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2428, a bill to amend the National Sea Grant College Program Act.

S. 2458

At the request of Mrs. HUTCHISON, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 2458, a bill to enhance United States diplomacy, and for other purposes.

S. 2538

At the request of Mr. REID, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 2538, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

S. 2554

At the request of Mr. SMITH of New Hampshire, the names of the Senator from Wyoming (Mr. ENZI), the Senator from Alabama (Mr. SESSIONS), and the Senator from Wyoming (Mr. THOMAS) were added as cosponsors of S. 2554, a bill to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes .

S. 2591

At the request of Mr. REID, the name of the Senator from Tennessee (Mr. FRIST) was added as a cosponsor of S. 2591, a bill to reauthorize the Mammography Quality Standards Act, and for other purposes.

S.J. RES. 37

At the request of Mr. WELLSTONE, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S.J. Res. 37, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by Centers for Medicare & Medicaid Services within the Department of Health and Human Services relating to modification of the medicaid upper payment limit for non-State government owned or operated hospitals published in the Federal Register on January 18, 2002. and submitted to the Senate on March 15, 2002.

S. RES. 267

At the request of Mr. KERRY, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. Res. 267, a resolution expressing the sense of the Senate regarding the policy of the United States at the 54th Annual Meeting of the International Whaling Commission.

S. RES. 272

At the request of Mr. CORZINE, his name was added as a cosponsor of S. Res. 272, a resolution expressing the sense of the Senate regarding the success of the Varela Project's collection of 10,000 certified signatures in support of a national referendum and the delivery of these signatures to the Cuban National Assembly.

S. CON. RES. 110

At the request of Mrs. FEINSTEIN, the names of the Senator from Alabama (Mr. SESSIONS) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. Con. Res. 110, a concurrent resolution honoring the heroism and courage displayed by airline flight attendants on a daily basis.

AMENDMENT NO. 3569

At the request of Mr. GRAHAM, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of amendment No. 3569 proposed to H.R. 4775, a bill making supplemental appropriations for the fiscal year ending September 30, 2002, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DASCHLE (for Mr. HARKIN (for himself and Mr. CRAIG):

S. 2605. A bill to amend title XVIII of the Social Security Act to geographically adjust the amount of the Medicare part B premium based on the use of health care items and services in the State in which the Medicare beneficiary resides, and for purposes; to the Committee on Finance.

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

• Mr. HARKIN. Madam President, there few programs that are more important to the health and quality of life of Americans than Medicare. It has been a godsend for millions of Americans. It deserves our strong support. We need to make sure that Medicare is strong, secure and improved for the future.

The biggest gap in Medicare's coverage is it's lack of help with the high costs of prescription drugs. I feel strongly that we must move forward to provide seniors with an affordable, reliable Medicare prescription drug benefit this year. I call on our leadership to bring legislation to the floor so that we can provide seniors with much needed relief.

Another area that is in urgent need of improvement is the fairness of the distribution of Medicare's payments and costs throughout the states. The Medicare program is placing seniors and health care providers in certain States at a severe disadvantage compared to other States. There are currently unjustifiable inequities in the system that affect the way in which both seniors and health care professionals are treated. Rather than rewarding States with healthy populations, that have efficient, high quality health care practices, and practice health care cost containment, the Medicare system is punishing these States.

For example, seniors enrolled in the Medicare program pay monthly part B

premiums of $54 across the United States. Medicare part B premiums are set by law to cover 25 percent of total national Part B spending regardless of where one lives or how many services one uses. However, data provided by the Medicare Payment Advisory Commission, Medpac, shows that the amount of part B services seniors use state by state varies significantly, from 70 percent of the national average to 128 percent of the national average. This is because in States like Iowa seniors lead healthier lifestyles and use fewer health care services and we have excellent health care providers who have always practiced efficient, conservative medicine. I believe that a health population, and an efficient health care system, should be rewarded under the Medicare program; however the system has been established to achieve quite the opposite.

Not only do seniors in my State have higher Medicare part B premiums because of the higher number of services seniors receive in other states, health care providers in my State are receiving the lowest reimbursement levels in the country. Iowa health care providers receive $3,053 on average per beneficiary, while the national average is $5,490, and the highest state receives over $7,000 per beneficiary. Senator CRAIG and I, along with a host of our colleagues, have introduced a bipartisan bill called the Medicare Fairness in Reimbursement Act, S. 1020, that would reduce this unjustified disparity that serves to punish the health care providers in our states year after year. Under the FAIR Act, no state would be under 95 percent of the national average, and no state would be over 105 percent of the national average. A similar adjustment would be made for the part B geographic payment indices.

We must work to alleviate the disparity that exists between states under the Medicare program, before we drive those states into a crisis. We can no longer ignore the direct and critical connection between provider reimbursement under the Medicare program, and access to high quality health care for our seniors.

That is why today I am pleased to be joined by my colleague Senator CRAIG of Idaho in introducing legislation to increase fairness in Medicare part B premiums for seniors. Monthly Medicare premiums would be set at 25 percent of projected total Medicare Part B costs for each state, rather than nationally. For example, Minnesota seniors utilize the least amount of part B services, 70 percent of the national average. As a result, under our bill seniors in Minnesota would pay a monthly premium of $38, instead of the current national premium of $54. Seniors in my home State of Iowa use 75 percent of the national average of part B services, and therefore, under this bill they would pay a monthly premium of $41, rather than $54.

Our legislation is budget neutral. It would simply set Medicare premiums based on state level costs rather than an aggregated national cost figure.

It is common sense. If a person in Iowa goes out and buys car insurance, or health insurance for themselves, they will pay different premiums than someone buying insurance in New York or California. It's time for the Medicare program to stop punishing those States that have healthy seniors and efficient health care providers.

We need to restore greater fairness in Medicare's payment among the 50 States. However until we achieve greater equity, seniors in low cost States should not have to bear an unfair portion of health care costs. Senator CRAIG and I will be working to get this issue addressed as a part of Medicare reforms this year. I urge my colleagues to review this important new proposal and to join us in working to achieve its passage.●

By Mrs. BOXER:

S. 2606. A bill to require the Secretary of Labor to establish a trade adjustment assistance program for certain service workers, and for other purposes; to the Committee on Finance.

Mrs. BOXER. Madam President, today I am introducing legislation to make truckers eligible for Trade Adjustment Assistance, TAA. A similar provision was in the original Finance Committee package of trade legislation that we recently considered in the Senate. Unfortunately, this provision was removed in last minute negotiations.

Currently, Mexican trucks bring goods into the United States must transfer those goods to an American truck at the border. On June 30, 2002, that will change. Mexican trucks will be allowed into the country, and as a result, hard-working Americans will lose their jobs. Future trade agreements may make the problem even greater. However, these laid-off truckers will not be eligible for TAA.

TAA exists out of recognition that our decision on trade in Washington cause very specific groups of American workers to lose jobs. TAA provides those workers with the assistance they need to successfully transition to new jobs.

New trade rules that allow foreign truckers to operate in the United States beginning June 30, 2002 will cause an American trucker to lose his or her job just as much as new trade rules cause a textile worker to lose his or her job. Providing TAA assistance to both of these groups of workers is right because neither lost their job through any fault of their own—both will have lost their job as a result of new rules we create in Washington.

American union truck drivers are some of the hardest working and finest paid in the world. They make about $50,000 a year as a starting salary and receive great benefits. And nonunion drivers make $35,000 to $40,000 a year plus benefits. Compare these figures with the salaries of foreign truckers that will now operate in the United States or going to operate in the United States in the near future. Mexican drivers make dramatically less than American truckers, about $18,000 a year at best and few benefits. They are also allowed to drive recklessly long hours at that low pay. American truckers cannot compete with that. Those who lose their jobs as a result of this new competition allowed for by trade law should have access to TAA assistance.

The legislation I am introducing will direct the Secretary of Labor to establish a program to provide TAA assistance to any domestic operator of a motor carrier who is adversely affected by competition from any foreign owned or operated motor carrier. The act also directs the Secretary of labor to report to Congress within 2 years on adversely affected service workers and recommend legislation that the Secretary considers appropriate for extending TAA to service workers as well.

The TAA program will remain inadequate as long as any workers are losing jobs directly as a result of trade agreements and not getting the help they need to participate in the new economy. The trade debate has not adequately considered the fate of those who lose from trade. It is our responsibility to make sure that these hard-working Americans have a voice in this debate and that they and their families are able to reap the rewards of trade instead of just suffer its consequences.

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. 2606

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

SECTION 1. TRADE ADJUSTMENT ASSISTANCE.

Not later than 180 days after the date of enactment of the Trade Adjustment Assistance Reform Act of 2002, the Secretary shall establish a program to provide assistance under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.), as amended by the Trade Adjustment Assistance Reform Act of 2002, to provide trade adjustment assistance to any domestic operator of a motor carrier who is adversely affected by competition from any foreign owned or operated motor carrier.

SEC. 2. DATA COLLECTION AND REPORT.

(a) DATA COLLECTION SYSTEM.—Not later than 180 days after the date of enactment of the Trade Adjustment Assistance Reform Act of 2002, the Secretary shall put in place a system to collect data on adversely affected service workers that includes the number of workers by State, industry, and cause of dislocation for each worker.

(b) REPORT.—Not later than 2 years after the date of enactment of the Trade Adjustment Assistance Reform Act of 2002, the Secretary shall report to Congress proposed methods to extend the programs under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.) to adversely affected service workers. The report shall include any recommendations for legislation that the Secretary considers appropriate regarding such programs.

SEC. 3. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

(2) TRADE ADJUSTMENT ASSISTANCE REFORM ACT OF 2002.—The term ''Trade Adjustment Assistance Reform Act of 2002'' means the Trade Adjustment Assistance Reform Act of 2002, or any other Act enacted during the second session of the 107th Congress to provide trade adjustment assistance.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 282—DISAPPROVING THE WITHDRAWAL OF THE UNITED STATES FROM THE 1972 TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE LIMITATION OF ANTI-BALLISTIC MISSILE SYSTEMS (ABM TREATY), SIGNED IN MOSCOW ON MAY 26, 1972 (EX. L. 92–2)

Mr. FEINGOLD submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 282

Resolved, That—

(1) it is the sense of the Senate that approval of the United States Senate is required to terminate any treaty between the United States and another nation;

(2) the Senate shall determine the manner by which it gives its approval to such proposed termination; and

(3) the Senate does not approve the withdrawal of the United States from the 1972 Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems (ABM Treaty), signed in Moscow on May 26, 1972 (Ex. L. 92–2).

SENATE CONCURRENT RESOLUTION 120—COMMENDING THE PENNSYLVANIA NATIONAL GUARD FOR ITS EXEMPLARY SERVICE TO THE UNITED STATES IN THE WAR AGAINST TERRORISM AND OTHER RECENT DOCUMENTS

Mr. SPECTER (for himself and Mr. SANTORUM) submitted the following concurrent resolution; which was referred to the Committee on Armed Services:

S. CON. RES. 120

Whereas the Pennsylvania National Guard, the largest Army National Guard in the United States and fourth largest Air National Guard in the United States, has experienced call up and deployment rates at levels unseen since the Korean War and has provided historic levels of volunteers to critical missions of national importance;

Whereas the Pennsylvania National Guard has recently performed laudably in various overseas deployments to central Asia, Europe, Latin America, and other locations;

Whereas individuals and units of the Pennsylvania National Guard have been deployed within the Commonwealth of Pennsylvania on a variety of missions since the terrorist attacks on September 11, 2001, with 210 soldiers serving in security roles at 16 different Pennsylvania airports, and many other soldiers serving under State active duty status at all 5 of Pennsylvania's nuclear power plants;

Whereas individuals and units of the Pennsylvania National Guard have been deployed outside of Pennsylvania to serve along the northern border of the United States, in rescue and support operations immediately after the terrorist attacks on September 11, 2001, and with NORAD air controller components in New York providing critical assistance to combat air patrols over the United States in Operation Noble Eagle/Enduring Freedom;

Whereas the 193rd Special Operations Wing, under the command of Brigadier General Steve Speer, which is the most deployed active or reserve Air Force or Air National Guard unit in the United States, deployed to central Asia in September 2001 to provide one-of-a-kind psychological warfare resources to Allied commanders in Operation Noble Eagle/Enduring Freedom, with 900 members of that unit serving the cause of freedom and liberty valiantly;

Whereas the 111th Fighter Wing, under the command of Colonel Stephen Sischo, has participated extensively in Operation Noble Eagle/Enduring Freedom, while also serving in Operation Southern Watch, flying 682 hours during 318 sorties enforcing the no-fly zone over Iraq;

Whereas the 171st Air Refueling Wing, under the command of Brigadier General William Boardly, has flown 242 sorties in support of Operation Noble Eagle/Enduring Freedom;

Whereas the 140th Weather Flight, 270th Engineering Installation Squadron, the 146th Weather Flight, the 112th Air Control Squadron, the 201st RED HORSE Flight, the 211th Engineering Installation Squadron, the 258th Air Traffic Control Squadron, and the 271st Combat Communications Squadron have also participated in Operation Noble Eagle/Enduring Freedom;

Whereas the 28th Infantry Division of the Pennsylvania Army Guard, under the command of Major General Walt Pudlowski, has provided units and soldiers recently to operations in central Europe as part of KFOR and SFOR Balkans stabilization efforts and central Asia in the war on terrorism;

Whereas soldiers and units of the 28th Infantry Division, under the direction of Brigadier General Wesley Craig, have begun preparing for future tasks as one of the first active or Guard units to transform into an Interim Brigade Combat Team, part of the Army's future objective force;

Whereas elements of the 28th Infantry Division, under the command of Brigadier General John von Trott, will become the lead headquarters element of SFOR based at Eagle Base Tuzla, Bosnia, with approximately 1,100 soldiers of the Pennsylvania Army National Guard deploying as peacekeepers for six months; and

Whereas approximately 2,000 soldiers of the Pennsylvania Army National Guard, including soldiers from the 55th Brigade, the 1-213 ADA, the 876 EN, and numerous additional units from across the Commonwealth of Pennsylvania, will soon deploy as primary components of Task Force Keystone, providing enhanced security for United States forces based at NATO facilities in Germany, Belgium, Luxembourg, the Netherlands, and Italy: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress commends the soldiers and airman of the Pennsylvania National Guard, under the command of the Pennsylvania Adjutant General, Major General William B. Lynch, and Deputy Adjutant Generals, Major General James Skiff and Brigadier General Jessica Wright, for their exemplary service to the United States in the war against terrorism and other recent deployments.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3808. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table.

SA 3809. Mr. SMITH, of New Hampshire submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3810. Mr. GRAMM submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3811. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3812. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3813. Mr. SMITH, of New Hampshire submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3814. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3815. Mr. McCONNELL submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3816. Mr. McCONNELL submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3817. Mr. McCONNELL submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3818. Mr. ALLEN submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3819. Mr. LOTT submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3820. Mr. LOTT submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3821. Mr. MURKOWSKI submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3822. Mr. HATCH submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3823. Mr. HATCH submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3824. Mr. HATCH submitted an amendment intended to be proposed by him to the bill S. 625, supra.

SA 3825. Mr. HATCH submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

SA 3826. Mr. HATCH submitted an amendment intended to be proposed by him to the bill S. 625, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3808. Mr. BYRD submitted an amendment intended to be proposed by

him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, line 8, after ''orientation,'' insert ''age,''.

On page 5, line 24, after ''orientation,'' insert ''age,''.

On page 10, line 25, after ''orientation,'' insert ''age,''.

On page 11, line 9, after ''orientation,'' insert ''age,''.

On page 13, line 14, after ''orientation,'' insert ''age,''.

SA 3809. Mr. SMITH of New Hampshire submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

On page 11, line 9, after ''orientation,'' insert ''pregnancy,''.

SA 3810. Mr. GRAMM submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . DEFENSE OF HOME ACT.

(a) RIGHT TO KEEP A FIREARM IN ONE'S HOME. Notwithstanding any other provisions of law, a person may not be held criminally liable for the possession of a firearm, or ammunition suitable for use in such firearm, or for the manner in which such firearm was stored in the person's place of residence if each of the following are established by a preponderance of the evidence:

(1) The person has attained the age of 18 years of age, has not been convicted of a felony and is not otherwise prohibited by 18 U.S.C. 922(g) from possessing a firearm; and

(2) The possession occurred:

(A) in place in which the person has resided for 30 days or more; or

(B) the firearm was unloaded and the person was traveling to or from such place of residence for the purposes of transporting the firearm in connection with an otherwise lawful transaction or activity.

(b) RIGHT TO DEFEND ONE'S HOME.—Notwithstanding any other provision of law, a person shall have the right to use a firearm in defense of the person's home to prevent the commission of a felony by another or to prevent a reasonably perceived threat of serious bodily injury to an individual in the person's home.

(c) ENFORCEMENT OF RIGHTS.—A person shall be immune from prosecution in any state court or court of the United States for violation of any law relating to possession, use, transfer, receipt or transportation of a firearm, if it is established by a preponderance of the evidence that:

(1) The person's use, possession, transfer, or receipt of the firearm was in connection with an otherwise lawful act of self defense; and

(2) The person's conduct complied with the requirements of this section.

(d) DEFINITIONS.—For purposes of this section, the term firearm means a shotgun (as defined in 18 U.S.C. 921(a)(5)), a rifle (as defined in 18 U.S.C. 921(a)(7)), or a handgun (as defined in 18 U.S.C. 921(a)(29)).

SA 3811. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, line 9, before the period, insert the following: '', as does the incidence of sexual abuse of minors on the basis of their youth''.

At the appropriate place, insert the following:

SEC. ___. DISCLOSURE BY EMPLOYER OF SUSPECTED SEXUAL ABUSER.

(a) IN GENERAL.—Chapter 110 of title 18, United States Code, is amended by adding at the end the following:

''§ 2260A. Disclosure by employer of suspected sexual abuser

''(a) Any person who has reasonable cause to suspect or know that they are employing, or otherwise exercising any supervisory role over, a suspected sexual abuser, shall immediately disclose that cause of suspicion or knowledge to Federal or State and local law enforcement officials.

''(b) Any person who exercises a supervisory role over a suspected sexual abuser who is in contact with minors shall suspend such suspected sexual abuser from duties that place such suspected sexual abuser in contact with such minors.

''(c) Any person who violates subsection (a) or (b) shall be imprisoned 60 days, fined $10,000, or both.

''(d) For purposes of this section, the term 'sexual abuser' means any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or assist any other person to engage in, any genital contact or other sexually explicit conduct, or any simulation of such conduct, rape, statutory rape, molestation, prostitution, or other form of sexual exploitation.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 110 of title 18, United States Code, is amended by adding at the end the following:

''2260A. Disclosure by employer of suspected sexual abuser.''.

SEC. ___. REPORT.

Not later than 6 months after the date of enactment of this Act, the Attorney General, in cooperation with the Secretary of Labor, shall report to Congress on the affect of the amendments made by this Act with respect to disclosure by employers of suspected sexual abusers.

SA 3812. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. DEFENSE AUTHORIZATION.

(a) The provisions of S. 2514 of the 107th Congress as reported by the Committee on Armed Services of the Senate on May 15, 2002, are hereby enacted into law.

(b) In publishing this Act in slip form and in the United States Statutes at Large pursuant to section 112 of title 1, United States Code, the Archivist of the United States shall include after the date of approval at the end appendixes setting forth the texts of the bills referred to in subsection (a) and the text of any other bill enacted into law by reference by reason of the enactment of this Act.

SA 3813. Mr. SMITH of New Hampshire submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

Add at the end the following:

( ) CONTINGENT PROHIBITION ON AVAILABILITY OF FISCAL YEAR 2003 FUNDS FOR SUPPORT OF PALESTINIAN AUTHORITY.—(1) Notwithstanding any other provision of law, no funds available to any department, agency, or other element of the Federal Government for fiscal year 2003 may be obligated or expended for the purpose, or in a manner which would have the effect, of supporting—

(A) the Palestinian Authority;

(B) any entity supported by the Palestinian Authority;

(C) any successor entity to the Palestinian Authority or an entity referred to in subparagraph (B); or

(D) any private, voluntary organization for—

(i) projects related to the Palestinian Authority; or

(ii) projects located in Palestine that would otherwise be undertaken by the Palestinian Authority or an entity referred to in paragraph (2) or (3).

(2) The prohibition in paragraph (1) shall cease to be effective upon the submittal by the President to Congress of a certification that neither the Palestinian Authority, nor any entity supported by the Palestinian Authority, has engaged in planning or carrying out any terrorist act during the six-month period ending on the date of the certification.

(3) For purposes of this subsection, support shall include direct and indirect support, whether such support is financial or otherwise, including support for the Holst Fund of the World Bank and the United Nations Relief and Works Agency.

SA 3814. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE ___—HELPING EFFICIENT, ACCESSIBLE, LOW COST, TIMELY HEALTH CARE (HEALTH)

SEC. ___01. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the

United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this title to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of ''defensive medicine'' and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

SEC. ___02. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

A health care lawsuit may be commenced no later than 3 years after the date of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of a health care lawsuit exceed 3 years, except that in the case of an alleged injury sustained by a minor before the age of 6, a health care lawsuit may be commenced by or on behalf of the minor until the later of 3 years from the date of injury, or the date on which the minor attains the age of 8.

SEC. ___03. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, the full amount of a claimant's economic loss may be fully recovered without limitation.

(b) ADDITIONAL NONECONOMIC DAMAGES.—In any health care lawsuit, the amount of noneconomic damages recovered may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—In any health care lawsuit, an award for future noneconomic damages shall not be discounted to present value. The jury shall not be informed about the maximum award for noneconomic damages. An award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law. If separate awards are rendered for past and future noneconomic damages and the combined awards exceed $250,000, the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

SEC. ___04. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants. In particular, in any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity. In no event shall the total of all contingent fees for representing all claimants in a health care lawsuit exceed the following limits:

(1) 40 percent of the first $50,000 recovered by the claimant(s).

(2) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(3) 25 percent of the next $500,000 recovered by the claimant(s).

(4) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—The limitations in this section shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution. In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

SEC. ___05. ADDITIONAL HEALTH BENEFITS.

In any health care lawsuit, any party may introduce evidence of collateral source benefits. If a party elects to introduce such evidence, any opposing party may introduce evidence of any amount paid or contributed or reasonably likely to be paid or contributed in the future by or on behalf of the opposing party to secure the right to such collateral source benefits. No provider of collateral source benefits shall recover any amount against the claimant or receive any lien or credit against the claimant's recovery or be equitably or legally subrogated to the right of the claimant in a health care lawsuit. This section shall apply to any health care lawsuit that is settled as well as a health care lawsuit that is resolved by a fact finder.

SEC. ___06. PUNITIVE DAMAGES.

(a) IN GENERAL.—Punitive damages may, if otherwise permitted by applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer. In any health care lawsuit where no judgment for compensatory damages is rendered against such person, no punitive damages may be awarded with respect to the claim in such lawsuit. No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages. At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(1) whether punitive damages are to be awarded and the amount of such award; and

(2) the amount of punitive damages following a determination of punitive liability.

If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may be up to as much as two times the amount of economic damages awarded or $250,000, whichever is greater. The jury shall not be informed of this limitation.

(c) NO CIVIL MONETARY PENALTIES FOR PRODUCTS THAT COMPLY WITH FDA STANDARDS.—

(1) IN GENERAL.—No punitive damages may be awarded against the manufacturer or distributor of a medical product based on a claim that such product caused the claimant's harm where—

(A)(i) such medical product was subject to premarket approval or clearance by the Food and Drug Administration with respect to the safety of the formulation or performance of the aspect of such medical product which caused the claimant's harm or the adequacy of the packaging or labeling of such medical product; and

(ii) such medical product was so approved or cleared; or

(B) such medical product is generally recognized among qualified experts as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable Food and Drug Administration regulations, including without limitation those related to packaging and labeling.

(2) LIABILITY OF HEALTH CARE PROVIDERS.—A health care provider who prescribes a drug or device (including blood products) approved by the Food and Drug Administration shall not be named as a party to a product liability lawsuit involving such drug or device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug or device.

(3) PACKAGING.—In a health care lawsuit for harm which is alleged to relate to the adequacy of the packaging or labeling of a

drug which is required to have tamper-resistant packaging under regulations of the Secretary of Health and Human Services (including labeling regulations related to such packaging), the manufacturer or product seller of the drug shall not be held liable for punitive damages unless such packaging or labeling is found by the trier of fact by clear and convincing evidence to be substantially out of compliance with such regulations.

(4) EXCEPTION.—Paragraph (1) shall not apply in any health care lawsuit in which—

(A) a person, before or after premarket approval or clearance of such medical product, knowingly misrepresented to or withheld from the Food and Drug Administration information that is required to be submitted under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or section 351 of the Public Health Service Act (42 U.S.C. 262) that is material and is causally related to the harm which the claimant allegedly suffered; or

(B) a person made an illegal payment to an official of the Food and Drug Administration for the purpose of either securing or maintaining approval or clearance of such medical product.

SEC. ___07. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this title.

SEC. ___08. DEFINITIONS.

In this title:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term ''collateral source benefits'' means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. The term ''compensatory damages'' includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term ''contingent fee'' includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term ''economic damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE LAWSUIT.—The term ''health care lawsuit'' means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider, a health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(8) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider, a health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(9) HEALTH CARE LIABILITY CLAIM.—The term ''health care liability claim'' means a demand by any person, whether or not pursuant to ADR, against a health care provider, health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, including, but not limited to, third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services or medical products, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(10) HEALTH CARE ORGANIZATION.—The term ''health care organization'' means any person or entity which is obligated to provide or pay for health benefits under any health plan, including any person or entity acting under a contract or arrangement with a health care organization to provide or administer any health benefit.

(11) HEALTH CARE PROVIDER.—The term ''health care provider'' means any person or entity required by State or Federal laws or regulations to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(12) HEALTH CARE GOODS OR SERVICES.—The term ''health care goods or services'' means any goods or services provided by a health care organization, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(13) MALICIOUS INTENT TO INJURE.—The term ''malicious intent to injure'' means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) MEDICAL PRODUCT.—The term ''medical product'' means a drug or device intended for humans, and the terms ''drug'' and ''device'' have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

(15) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(16) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider, health care organization, or a manufacturer, distributor, or supplier of a medical product. Punitive damages are neither economic nor noneconomic damages.

(17) RECOVERY.—The term ''recovery'' means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(18) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. ___09. EFFECT ON OTHER LAWS.

(a) VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this title does not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such title XXI shall not apply to such action.

(2) APPLICATION OF TITLE TO CERTAIN ACTIONS.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(b) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this title shall be deemed to affect any defense available to a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. ___10. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this title preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this title. The provisions governing health care lawsuits set forth in this title supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this title; or

(2) prohibits the introduction of evidence regarding collateral source benefits, or mandates or permits subrogation or a lien on collateral source benefits.

(b) PROTECTION OF STATES' RIGHTS.—Any issue that is not governed by any provision of law established by or under this title (including State standards of negligence) shall be governed by otherwise applicable State or Federal law. This title does not preempt or supersede any law that imposes greater protections (such as a shorter statute of limitations) for health care providers and health care organizations from liability, loss, or damages than those provided by this title.

(c) STATE FLEXIBILITY.—No provision of this title shall be construed to preempt—

(1) any State statutory limit (whether enacted before, on, or after the date of the enactment of this title) on the amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, whether or not such State limit permits the recovery of a specific dollar amount of damages that is greater or lesser than is provided for under this title, notwithstanding section ___3(a); or

(2) any defense available to a party in a health care lawsuit under any other provision of State or Federal law.

SEC. ___011. APPLICABILITY; EFFECTIVE DATE.

This title shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this title, except that any health care lawsuit arising from an injury occurring prior to the date of the enactment of this title shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

SA 3815. Mr. MCCONNELL submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. NEWSPAPER THEFT IN VIOLATION OF FIRST AMENDMENT RIGHTS.

(a) OFFENSE.—

(1) IN GENERAL.—Chapter 13 of title 18, United States Code, is amended by inserting at the end the following:

"§ 249. Newspaper theft in violation of first amendment rights

''(a) NEWSPAPER DEFINED.—In this section, the term 'newspaper' means any periodical that is distributed on a complimentary or compensatory basis on or near a college or university.

''(b) ELEMENTS OF OFFENSE.—Whoever willfully or knowingly obtains or exerts unauthorized control over newspapers, or destroys such newspapers, with the intent to prevent other individuals from reading the newspapers shall be punished as provided in subsection (c).

''(c) PENALTY.—A person who violates this section is guilty of a class C misdemeanor.''.

(2) CHAPTER ANALYSIS.—The chapter analysis for chapter 13 of title 18, United States Code, is amended by inserting at the end the following:

''249. Newspaper theft in violation of first amendment rights.''.

(b) STUDY.—The Attorney General, in cooperation with the Secretary of Education, shall—

(1) not later than 6 months after the date of enactment of this Act, report to Congress on the frequency and extent of newspaper theft on college and university campuses; and

(2) work with States and local jurisdictions on developing laws and ordinances that are substantially similar to section 249 of title 18, United States Code, as added by subsection (a).

SA 3816. Mr. MCCONNELL submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, line 9, before the period, insert the following: '', as does the incidence of sexual abuse of minors on the basis of their youth''.

On page 13, between lines 4 and 5, insert the following:

''(3) OFFENSES INVOLVING THE SEXUAL ABUSE OF PRE-PUBESCENT CHILDREN AND OTHER MINORS.—

''(A) IN GENERAL.—Any person who engages in any act of sexual abuse of pre-pubescent children or any person who is in a position of authority and engages in any act of sexual abuse of post-pubescent minors shall be fined in accordance with this title, imprisoned not less than 1 year and not more than 5 years, or both.

''(B) DEFINITION.—For purposes of this paragraph, the term 'sexual abuse' means employment, use, persuasion, inducement, enticement, or coercion of any minor to engage in, or assist any other person to engage in, any genital contact or other sexually explicit conduct, or any simulation of such conduct, rape, statutory rape, molestation, prostitution, or other form of sexual exploitation.

At the appropriate place, insert the following:

SEC. ___. SEXUAL ABUSE OF CHILDREN AND OTHER MINORS.

Section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. 994 note) is amended—

(1) by striking ''means a crime'' and inserting the following: ''means—

''(1) a crime''; and

(2) by striking the period at the end and inserting the following: ''; and

''(2) an offense involving the sexual abuse of pre-pubescent children or the sexual abuse or post-pubescent minors by a person who is in a position of authority, as described in section 249(a)(3) of title 18.''.

SEC. ___. REPORT.

Not later than 6 months after the date of enactment of this Act, the Attorney General, in cooperation with the Secretary of Labor, shall report to Congress on the affect of the amendments made by this Act with respect to hate crime offenses involving the sexual abuse of minors.

SA 3817. Mr. MCCONNELL submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

On page 10, line 25, after ''ORIENTATION,'' insert ''AGE,''.

On page 11, line 9, after ''orientation,'' insert ''age,''.

SA. 3818. Mr. ALLEN submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, line 8, after ''orientation,'' insert ''age,''.

On page 5, line 24, after ''orientation,'' insert ''age,''.

On page 10, line 25, after ''ORIENTATION,'' insert ''AGE,''.

On page 11, line 9, after ''orientation,'' insert ''age,''.

On page 13, line 14, after ''orientation,'' insert ''age,''.

SA 3819. Mr. LOTT submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

On page 11, line 9, after ''orientation,'' insert ''law enforcement officials, including State and Federal prosecutors, judges, firefighters, and law enforcement officers,''.

SA 3820. Mr. LOTT submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

On page 11, line 9, after ''orientation,'' insert ''union membership or lack thereof,''.

SA 3821. Mr. MURKOWSKI submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

On page 4, between lines 3 and 4, insert the following:

(11) Many Alaska Natives were subject to slavery prior to the purchase of Alaska by the United States in 1867. Since that time, language and cultural barriers have made it difficult for Alaska Natives to understand the nuances of the United States judicial system. Many Alaska Natives have been victimized by racial discrimination, leading to a widespread perception among Alaska Native leaders of racial bias against the Alaska Native community.

On page 4, line 4, strike ''(11)'' and insert ''(12)''.

On page 4, line 17, strike ''(12)'' and insert ''(13)''.

On page 4, line 21, strike ''(13)'' and insert ''(14)''.

SA 3822. Mr. HATCH submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

On page 10, strike line 14 and all that follows through page 11, line 23, and insert the following:

both;

''(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill; and

''(C) shall be punished by death or imprisonment for any term of years or for life, or both, if death results from the offense, provided that the State in which the offense was committed would have provided for the punishment of death if the offense was prosecuted under the laws of such State.

''(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, OR DISABILITY.—

''(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B), willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, or disability of any person—

''(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both;

''(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill; and

''(iii) shall be punished by death or imprisonment for any term of years or for life, or both, if death results from the offense, provided that the State in which the offense was committed would have provided for the punishment of death if the offense was prosecuted under the laws of such State.

SA 3823. Mr. HATCH submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

On page 13, strike line 23 and all that follows through page 14, line 6, and insert the following:

''(B) the State has requested that the Federal Government assume jurisdiction; or

''(C) the State does not object to the Federal Government assuming jurisdiction.''

SA 3824. Mr. HATCH submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; as follows:

On page 10, strike line 14 and all that follows through page 11, line 23, and insert the following:

both;

''(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill; and

''(C) shall be punished by death or imprisonment for any term of years or for life, or both, if death results from the offense.

''(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, OR DISABILITY.—

''(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B), willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, or disability of any person—

''(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both;

''(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill; and

''(iii) shall be punished by death or imprisonment for any term of years or for life, or both, if death results from the offense.

SA 3825. Mr. HATCH submitted an amendment intended to be proposed by him to the bill S. 625, to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SECTION ____. COMPREHENSIVE STUDY AND SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS BY STATE AND LOCAL LAW ENFORCEMENT OFFICIALS.

(a) STUDIES.—

(1) COLLECTION OF DATA.—

(A) DEFINITION OF RELEVANT OFFENSE.—In this subsection, the term ''relevant offense'' means a crime described in section 1(b)(1) of the Hate Crimes Statistics Act (28 U.S.C. 534 note) and a crime that manifests evidence of prejudice based on gender or age.

(B) COLLECTION FROM CROSS-SECTION OF STATES.—Not later than 120 days after the date of enactment of this Act, the Comptroller General of the United States, in consultation with the National Governors' Association, shall select 5 jurisdictions with laws classifying certain types of offenses as relevant offenses and 5 jurisdictions without such laws from which to collect the data described in subparagraph (C) over a 12-month period.

(C) DATA TO BE COLLECTED.—The data described in this subparagraph are—

(i) the number of relevant offenses that are reported and investigated in the jurisdiction;

(ii) the percentage of relevant offenses that are prosecuted and the percentage that result in conviction;

(iii) the duration of the sentences imposed for crimes classified as relevant offenses in the jurisdiction, compared with the length of sentences imposed for similar crimes committed in jurisdictions with no laws relating to relevant offenses; and

(iv) references to and descriptions of the laws under which the offenders were punished.

(D) COSTS.—Participating jurisdictions shall be reimbursed for the reasonable and necessary costs of compiling data collected under this paragraph.

(2) STUDY OF RELEVANT OFFENSE ACTIVITY.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall complete a study and submit to Congress a report that analyzes the data collected under paragraph (1) and under section 534 of title 28, United States Code, to determine the extent of relevant offense activity throughout the United States and the success of State and local officials in combating that activity.

(B) IDENTIFICATION OF TRENDS.—In the study conducted under subparagraph (A), the Comptroller General of the United States shall identify any trends in the commission of relevant offenses specifically by—

(i) geographic region;

(ii) type of crime committed; and

(iii) the number and percentage of relevant offenses that are prosecuted and the number for which convictions are obtained.

(b) ASSISTANCE OTHER THAN FINANCIAL ASSISTANCE.—At the request of a law enforcement official of a State or a political subdivision of a State, and in cases where the Attorney General determines special circumstances exist, the Attorney General, acting through the Director of the Federal Bureau of Investigation may provide technical, forensic, prosecutorial, or any other assistance in the criminal investigation or prosecution of any crime that—

(1) constitutes a crime of violence (as defined in section 16 of title 18, United States Code);

(2) constitutes a felony under the laws of the State; and

(3) is motivated by animus against the victim by reason of the victim's actual or perceived race, color, religion, national origin, or sexual orientation.

(c) APPOINTMENT OF LIAISONS.—

(1) IN GENERAL.—The Attorney General, or a designee of the Attorney General, shall appoint not less than 1 Assistant United States Attorney in every Federal jurisdiction in the United States to act as a liaison for State and local prosecutions of the offenses specified in subsection (b).

(2) RESPONSIBILITIES.—The liaisons appointed under paragraph (1)—

(A) shall ensure that any State and local requests for assistance are timely processed; and

(B) may assist the State and local investigation or prosecution in any way consistent with Department of Justice policy, including obtaining wiretaps pursuant to chapter 119 of title 18, United States Code, or obtaining search warrants from a United States District Court.

(d) GRANTS.—

(1) IN GENERAL.—The Attorney General may, in cases where the Attorney General determines special circumstances exist, make grants to States and local subdivisions of States to assist those entities in the investigation and prosecution of crimes motivated by animus against the victim by reason of the victim's actual or perceived race, color, religion, national origin, or sexual orientation.

(2) ELIGIBILITY.—A State or political subdivision of a State applying for assistance under this subsection shall—

(A) describe the purposes for which the grant is needed; and

(B) certify that the State or political subdivision lacks the resources necessary to investigate or prosecute a crime motivated by

animus against the victim by reason of the membership of the victim in a particular class or group.

(3) DEADLINE.—An application for a grant under this subsection shall be approved or disapproved by the Attorney General not later than 10 days after the application is submitted.

(4) GRANT AMOUNT.—A grant under this subsection shall not exceed $100,000 for any single case, absent a certification from the Attorney General, or a designee of the Attorney General, that special circumstances warranting additional funds exist.

(5) REPORT AND AUDIT.—Not later than December 31, 2003, the Attorney General, in consultation with the National Governors' Association, shall—

(A) submit to Congress a report describing the applications made for grants under this subsection, the award of such grants, and the effectiveness of the grant funds awarded; and

(B) conduct an audit of the grants awarded under this subsection to ensure that such grants are used for the purposes provided in this subsection.

(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $5,000,000 for each of the fiscal years 2003 and 2004 to carry out this section.

SA 3826. Mr. HATCH submitted an amendment intended to be proposed by him to the bill S. 625 to provide Federal assistance to States and local jurisdictions to prosecute hate crimes, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. COMPREHENSIVE STUDY AND SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS BY STATE AND LOCAL LAW ENFORCEMENT OFFICIALS.

(a) STUDIES.—

(1) COLLECTION OF DATA.—

(A) DEFINITION OF RELEVANT OFFENSE.—In this subsection, the term ''relevant offense'' means a crime described in section 1(b)(1) of the Hate Crimes Statistics Act (28 U.S.C. 534 note) and a crime that manifests evidence of prejudice based on gender or age.

(B) COLLECTION FROM CROSS-SECTION OF STATES.—Not later than 120 days after the date of enactment of this Act, the Comptroller General of the United States, in consultation with the National Governors' Association, shall select 5 jurisdictions with laws classifying certain types of offenses as relevant offenses and 5 jurisdictions without such laws from which to collect the data described in subparagraph (C) over a 12-month period.

(C) DATA TO BE COLLECTED.—The data described in this subparagraph are—

(i) the number of relevant offenses that are reported and investigated in the jurisdiction;

(ii) the percentage of relevant offenses that are prosecuted and the percentage that result in conviction;

(iii) the duration of the sentences imposed for crimes classified as relevant offenses in the jurisdiction, compared with the length of sentences imposed for similar crimes committed in jurisdictions with no laws relating to relevant offenses; and

(iv) references to and descriptions of the laws under which the offenders were punished.

(D) COSTS.—Participating jurisdictions shall be reimbursed for the reasonable and necessary costs of compiling data collected under this paragraph.

(2) STUDY OF RELEVANT OFFENSE ACTIVITY.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall complete a study and submit to Congress a report that analyzes the data collected under paragraph (1) and under section 534 of title 28, United States Code, to determine the extent of relevant offense activity throughout the United States and the success of State and local officials in combating that activity.

(B) IDENTIFICATION OF TRENDS.—In the study conducted under subparagraph (A), the Comptroller General of the United States shall identify any trends in the commission of relevant offenses specifically by—

(i) geographic region;

(ii) type of crime committed; and

(iii) the number and percentage of relevant offenses that are prosecuted and the number for which convictions are obtained.

(b) ASSISTANCE OTHER THAN FINANCIAL ASSISTANCE.—At the request of a law enforcement official of a State or a political subdivision of a State, and in cases where the Attorney General determines special circumstances exist, the Attorney General, acting through the Director of the Federal Bureau of Investigation may provide technical, forensic, prosecutorial, or any other assistance in the criminal investigation or prosecution of any crime that—

(1) constitutes a crime of violence (as defined in section 16 of title 18, United States Code);

(2) constitutes a felony under the laws of the State; and

(3) is motivated by animus against the victim by reason of the victim's actual or perceived race, color, religion, national origin, or sexual orientation.

(c) APPOINTMENT OF LIAISONS.—

(1) IN GENERAL.—The Attorney General, or a designee of the Attorney General, shall appoint not less than 1 Assistant United States Attorney in every Federal jurisdiction in the United States to act as a liaison for State and local prosecutions of the offenses specified in subsection (b).

(2) RESPONSIBILITIES.—The liaisons appointed under paragraph (1)—

(A) shall ensure that any State and local requests for assistance are timely processed; and

(B) may assist the State and local investigation or prosecution in any way consistent with Department of Justice policy, including obtaining wiretaps pursuant to chapter 119 of title 18, United States Code, or obtaining search warrants from a United States District Court.

(d) GRANTS.—

(1) IN GENERAL.—The Attorney General may, in cases where the Attorney General determines special circumstances exist, make grants to States and local subdivisions of States to assist those entities in the investigation and prosecution of crimes motivated by animus against the victim by reason of the victim's actual or perceived race, color, religion, national origin, or sexual orientation.

(2) ELIGIBILITY.—A State or political subdivision of a State applying for assistance under this subsection shall—

(A) describe the purposes for which the grant is needed; and

(B) certify that the State or political subdivision lacks the resources necessary to investigate or prosecute a crime motivated by animus against the victim by reason of the membership of the victim in a particular class or group.

(3) DEADLINE.—An application for a grant under this subsection shall be approved or disapproved by the Attorney General not later than 10 days after the application is submitted.

(4) GRANT AMOUNT.—A grant under this subsection shall not exceed $100,000 for any single case, absent a certification from the Attorney General, or a designee of the Attorney General, that special circumstances warranting additional funds exist.

(5) REPORT AND AUDIT.—Not later than December 31, 2003, the Attorney General, in consultation with the National Governors' Association, shall—

(A) submit to Congress a report describing the applications made for grants under this subsection, the award of such grants, and the effectiveness of the grant funds awarded; and

(B) conduct an audit of the grants awarded under this subsection to ensure that such grants are used for the purposes provided in this subsection.

(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $5,000,000 for each of the fiscal years 2003 and 2004 to carry out this section.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Tuesday, June 11, 2002, at 1:30 p.m. in room 485 of the Russell Senate Office Building to conduct an oversight hearing on the work of the U.S. Department of Interior's Branch of Acknowledgment and Research within the Bureau of Indian Affairs.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources.

The hearing will take place Tuesday, June 18th, 2002, beginning at 2:30 p.m., in room 366 of the Dirksen Senate Office Building in Washington, D.C.

The purpose of the hearing is to receive testimony on the following bills:

S. 198, to require the Secretary of the Interior to establish a program to provide assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land;

S. 1846, to prohibit oil and gas drilling in Finger Lakes National Forest in the State of New York;

S. 1879, to resolve the claims of Cook Inlet Region, Inc., to lands adjacent to the Russian River in the State of Alaska;

S. 2222, to establish certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation;

S. 2471, to provide for the independent investigation of Federal wildland firefighter fatalities; and

S. 2483, to direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those

wishing to submit written testimony for the hearing record should e-mail it to *shelley_brown@energy.senate.gov* or fax it to (202) 224–4340.

For further information, please contact Kira Finkler of the committee staff at (202) 224–8164.

PRIVILEGE OF THE FLOOR

Mr. HATCH. Madam President, I ask unanimous consent that the following staff be given the privilege of the floor for the pendency of debate on S. 625: Stephanie Danis, Wan Kim, Brett Harvey, Rebecca Seidel, Tiffany Perry, and Leah Belaire.

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

SUPPLEMENTAL APPROPRIATIONS ACT FOR FISCAL YEAR 2002

On June 6, 2002, the Senate amended and passed H.R. 4775, as follows:

Resolved, That the bill from the House of Representatives (H.R. 4775) entitled ''An Act making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2002, and for other purposes, namely:

TITLE I—SUPPLEMENTAL APPROPRIATIONS

CHAPTER 1

DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount for ''Office of the Secretary'', $18,000,000, to remain available until expended: Provided, That the Secretary shall transfer these funds to the Agricultural Research Service, the Animal and Plant Health Inspection Service, the Agricultural Marketing Service, and/or the Food Safety and Inspection Service: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

AGRICULTURAL RESEARCH SERVICE

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $16,000,000, to remain available until September 30, 2003: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

BUILDINGS AND FACILITIES

For an additional amount for ''Buildings and Facilities'', $50,000,000, to remain available until expended.

COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE

EXTENSION ACTIVITIES

For an additional amount for ''Extension Activities'', $16,000,000, to remain available until September 30, 2003: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $60,000,000, to remain available until September 30, 2003: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

FOOD SAFETY AND INSPECTION SERVICE

For an additional amount for ''Food Safety and Inspection Service'', $15,000,000, to remain available until September 30, 2003: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

NATURAL RESOURCES CONSERVATION SERVICE

WATERSHED AND FLOOD PREVENTION OPERATIONS

For an additional amount for ''Watershed and Flood Prevention Operations'', for emergency recovery operations, $100,000,000, to remain available until expended: Provided, That of this amount, $27,000,000 is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

RURAL COMMUNITY ADVANCEMENT PROGRAM

For an additional amount for ''Rural Community Advancement Program'' for emergency purposes for grants and loans as authorized by 7 U.S.C. 381E(d)(2), 306(a)(14), and 306C, $25,000,000, with up to $5,000,000 for contracting with qualified organization(s) to conduct vulnerability assessments for rural community water systems, to remain available until expended: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

RURAL UTILITIES SERVICE

LOCAL TELEVISION LOAN GUARANTEE PROGRAM ACCOUNT

(INCLUDING RESCISSION)

Of funds made available under this heading for the cost of guaranteed loans, including the cost of modifying loans as defined in section 502 of the Congressional Budget Act of 1974, $20,000,000 are rescinded.

For an additional amount for ''Local Television Loan Guarantee Program Account'', $20,000,000, to remain available until expended.

FOOD AND NUTRITION SERVICE

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

For an additional amount for ''Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)'', $75,000,000, to remain available until September 30, 2003: Provided, That of the amounts provided in this Act and any amounts available for reallocation in fiscal year 2002, the Secretary shall reallocate funds under section 17(g)(2) of the Child Nutrition Act of 1966, as amended, in the manner and under the formula the Secretary deems necessary to respond to the effects of unemployment and other conditions caused by the recession.

FOOD STAMP PROGRAM

(RESCISSION)

Of funds which may be reserved by the Secretary for allocation to State agencies under section 16(h)(1) of the Food Stamp Act of 1977 to carry out the Employment and Training program, $33,000,000 are rescinded and returned to the Treasury.

GENERAL PROVISION, THIS CHAPTER

SEC. 101. ASSISTANCE TO AGRICULTURAL PRODUCERS THAT HAVE USED WATER FOR IRRIGATION FROM RIO GRANDE RIVER. (a) IN GENERAL.—The Secretary of Agriculture shall use $10,000,000 of the funds of the Commodity Credit Corporation to make a grant to the State of Texas, acting through the Texas Department of Agriculture, to provide assistance to agricultural producers in the State of Texas with farming operations along the Rio Grande River that have suffered economic losses during the 2001 crop year due to the failure of Mexico to deliver water to the United States in accordance with the Treaty Relating to the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, and Supplementary Protocol signed November 14, 1944, signed at Washington on February 3, 1944 (59 Stat. 1219; TS 944).

(b) AMOUNT.—The amount of assistance provided to individual agricultural producers under this section shall be proportional to the amount of actual losses described in subsection (a) that were incurred by the producers.

(c) EMERGENCY REQUIREMENT.—

(1) IN GENERAL.—The entire amount necessary to carry out this section shall be available only to the extent that an official budget request for the entire amount, that includes designation of the entire amount of the request as an emergency requirement under the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 et seq.), is transmitted by the President to Congress.

(2) DESIGNATION.—The entire amount necessary to carry out this section is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(A) of that Act (2 U.S.C. 901(b)(2)(A)).

SEC. 102. Not later than 14 days after the date of enactment of this Act, the Secretary of Agriculture shall carry out the transfer of funds under section 2507(a) of the Food Security and Rural Investment Act of 2002 (Public Law 107–171).

SEC. 103. SENSE OF THE SENATE ON COMPENSATION TO PRODUCERS OF POULTRY AFFECTED BY AVIAN INFLUENZA. It is the Sense of the Senate that the Secretary of Agriculture act expeditiously to provide compensation through the Commodity Credit Corporation to producers of poultry that have been affected by outbreaks of avian influenza in Virginia, West Virginia, and other States which have resulted in the destruction of poultry flocks in order to contain this disease.

SEC. 104. (a) FINDINGS.—(1) Of the 40 million people living with HIV/AIDS, nearly 2.7 million are children under 15, and 11.8 million are young people aged 15–24, more than 540,000 children were infected in mother-to-child transmission in 2000, and a baby born to an HIV-positive mother has a 25 to 35 percent chance of becoming infected.

(2) Targeted provision of dairy products for HIV/AIDS mitigation provides an economical and efficient means to strengthen nutrition, ward off infectious diseases and extend the lives of HIV-positive individuals.

(3) Good nutrition including dairy products is critical to programs that provide and enhance anti-retroviral drugs to prevent mother-to-child transmission of HIV/AIDS, and nutrition experts recommend the use of dairy products with anti-retroviral drugs to combat mother-to-child transmission.

(4) In the diets of young children, growing adolescents and pregnant women, milk has been proven to provide a concentration of critical nutritional elements that promote growth and robust health, and the National Institutes of Health (NIH) recommends that dairy products be used to boost the nutrition of HIV-positive young children.

(5) It is imperative that attempts to improve the availability of dairy products to the HIV/AIDS afflicted do not undermine the security and stability of the indigenous dairy production and processing sector.

(6) The United States has more than 1 billion pounds (450,000 metric tons) of surplus non-fat dry milk in storage that has been acquired at an average cost of over 90 cents per pound for a total cost approaching $1,000,000,000, and storage costs are $1,500,000 per month and growing.

(7) This huge amount of milk overhangs the United States and world markets and deteriorates rapidly, going out of condition in about 3

years when it must be sold for a salvage value of only a few cents per pound.

(8) The impacts of breast-feeding on mother-to-child transmission remain controversial and appropriate interventions are not yet scientifically proven, especially in low-income communities where appropriate alternatives are not available and may be unsafe.

(9) There is a need for non-fat dry milk in international relief to use in human feeding programs that target the most vulnerable in society, particularly those affected by HIV/AIDS.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Secretary of Agriculture should—

(1) utilize the existing 416(b) authority of the Agricultural Act of 1949 to dispose of dairy surpluses for direct feeding programs to mothers and children living with HIV/AIDS and communities heavily impacted by the HIV/AIDS pandemic;

(2) make available funds for the provision of 100,000 metric tons of surplus non-fat dry milk to combat HIV/AIDS, with a special focus on HIV-positive mothers and children, to include ocean and inland transportation, accounting, monitoring and evaluation expenses incurred by the Secretary of Agriculture, and expenses incurred by private and voluntary organizations and cooperatives related to market assessments, project design, fortification, distribution, and other project expenses;

(3) give careful consideration to the local market conditions before dairy products are donated or monetized into a local economy, so as not to undermine the security and stability of the indigenous dairy production and processing sector; and

(4) Use none of these funds or commodities in any programs that would substitute dairy products for breast-feeding.

SEC. 105. (a) RESCISSION.—The unobligated balance of authority available under section 2108(a) of Public Law 107–20 is rescinded as of the date of the enactment of this Act.

(b) APPROPRIATION.—There is appropriated to the Secretary of Agriculture an amount equal to the unobligated balance rescinded by subsection (a) for expenses through fiscal year 2003 under the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1721–1726a) for commodities supplied in connection with dispositions abroad pursuant to title II of said Act.

SEC. 106. Section 416(b)(7)(D)(iv) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)(7)(D)(iv)) is amended by striking ''subsection.'' and inserting in lieu thereof the following: ''subsection, or to otherwise carry out the purposes of this subsection.''.

SEC. 107. Notwithstanding any other provision of law and effective on the date of enactment of this Act, the Secretary may use an amount not to exceed $12,000,000 from the amounts appropriated under the heading Food Safety and Inspection Service under the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001 (Public Law 106–387) to liquidate over-obligations and over-expenditures of the Food Safety and Inspection Service incurred during previous fiscal years, approved by the Director of the Office of Management and Budget based on documentation provided by the Secretary of Agriculture.

CHAPTER 2

DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'' to respond to the September 11, 2001, terrorist attacks on the United States, $12,750,000, to remain available until expended: Provided, That $10,750,000 is for the planning, development, and deployment of an integrated fingerprint identification system, including automated capability to transmit fingerprint and image data for the design, and for the development, testing, and deployment of a standards-based, integrated, interoperable computer system for the Immigration and Naturalization Service (''Chimera system''), to be managed by Justice Management Division, as authorized by section 202 of H.R. 3525: Provided further, That $2,000,000 is for the Principal Associate Deputy Attorney General for Combating Terrorism: Provided further, That $10,750,000 is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

In addition, for the Office of Domestic Preparedness to respond to the September 11, 2001, terrorist attacks on the United States, $173,800,000, to remain available until expended, for grants, cooperative agreements, and other assistance authorized by sections 819 and 821 of the Antiterrorism and Effective Death Penalty Act of 1996 and sections 1014, 1015, and 1016 of the USA PATRIOT ACT (Public Law 107–56), and for other counterterrorism programs: Provided, That no funds under this heading shall be used to duplicate the Federal Emergency Management Agency Fire Grant program: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

LEGAL ACTIVITIES

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

For an additional amount for ''Salaries and Expenses'' for courtroom technology, $5,200,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

(RESCISSION)

Of the amounts made available under this heading in Public Law 107–77, $7,000,000 are rescinded.

SALARIES AND EXPENSES, UNITED STATES MARSHALS SERVICE

(RESCISSION)

Of the amounts made available under this heading for the Training Academy, $2,100,000 are rescinded.

ANTI-TERRORISM TASK FORCES

For expenses necessary for Anti-Terrorism Task Forces, including salaries and expenses, operations, equipment, and facilities, $45,000,000, to be derived from the amounts made available for this purpose in Public Law 107–77 and Public Law 107–117.

JOINT TERRORISM TASK FORCES

For expenses necessary for Joint Terrorism Task Forces, including salaries and expenses, operations, equipment, and facilities, $113,235,000, to be derived from the amounts made available for this purpose in Public Law 107–77 and Public Law 107–117.

FOREIGN TERRORIST TRACKING TASK FORCES

For expenses necessary for Foreign Terrorist Tracking Task Forces, including salaries and expenses, operations, equipment, and facilities, $10,000,000, to be derived from the amounts made available for this purpose in Public Law 107–77 and Public Law 107–117.

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'' for emergency expenses resulting from the September 11, 2001, terrorist attacks, $75,500,000, of which $50,500,000 is for a cybersecurity initiative: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

IMMIGRATION AND NATURALIZATION SERVICE

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'' for fleet management, $35,000,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

CONSTRUCTION

For an additional amount for ''Construction'' for emergency expenses resulting from the September 11, 2001, terrorist attacks, $84,000,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

FEDERAL PRISON SYSTEM

BUILDINGS AND FACILITIES

(RESCISSION)

Of the amounts made available under this heading in Public Law 107–77 for buildings and facilities, $30,000,000 are rescinded.

OFFICE OF JUSTICE PROGRAMS

ELECTION REFORM GRANT PROGRAM

For an amount to establish the Election Reform Grant Program, to provide assistance to States and localities in improving election technology and the administration of federal elections, $450,000,000, to remain available until expended: Provided, That such amount shall not be available for obligation until the enactment of legislation that establishes programs for improving the administration of elections.

JUSTICE ASSISTANCE

(RESCISSION)

Of the amounts made available under this heading for the Office of the Assistant Attorney General for Office of Justice Programs, $2,000,000 are rescinded, and for the Office of Congressional and Public Affairs, $2,000,000 are rescinded.

COMMUNITY ORIENTED POLICING SERVICES

For an amount to establish the Community Oriented Policing Services' Interoperable Communications Technology Program, for emergency expenses for activities related to combating terrorism by providing grants to States and localities to improve communications within, and among, law enforcement agencies, $85,000,000, to remain available until expended: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

DEPARTMENT OF COMMERCE AND RELATED AGENCIES

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

OPERATIONS AND ADMINISTRATION

For an additional amount for ''Operations and Administration'' for emergency expenses resulting from new homeland security activities, $1,725,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

EXPORT ADMINISTRATION

OPERATIONS AND ADMINISTRATION

For an additional amount for ''Operations and Administration'' for emergency expenses resulting from new homeland security activities, $8,700,000: Provided, That, of the funds appropriated under this heading, such sums as are necessary may be transferred to, and merged with, any appropriations account to develop and implement secure connectivity between Federal agencies and the Executive Office of the President: Provided further, That the entire amount is designated by the Congress as an

emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

BUREAU OF THE CENSUS

PERIODIC CENSUSES AND PROGRAMS

(RESCISSION)

Of the amounts made available under this heading in prior fiscal years, excepting funds designated for the Suitland Federal Center, $20,900,000 are rescinded.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

For an additional amount for ''Scientific and Technical Research and Services'' for emergency expenses resulting from new homeland security activities and increased security requirements, $84,600,000, of which $40,000,000 is for a cybersecurity initiative: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That of the amount appropriated under this heading, $500,000 shall be for the Center for Identification Technology Research at the West Virginia University for the purpose of developing interoperability standards and an application profile for technology neutral, portable, and data independent biometrics, in accordance with section 403(c)(2) of The USA PATRIOT Act (Public Law 107–56) and sections 201(c)(5) and 202(a)(4)(B) and title III of the Enhanced Border Security and Visa Reform Act (Public Law 107–173), and the amendments made by those provisions.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

For an additional amount for ''Operations, Research, and Facilities'' for emergency expenses resulting from homeland security activities, $29,200,000, of which $23,400,000 is to address critical mapping and charting backlog requirements, $3,000,000 is to enhance the National Water Level Observation Network and $2,800,000 is for backup capability for National Oceanic and Atmospheric Administration critical satellite products and services, to remain available until September 30, 2003: Provided, That $2,800,000 is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

PROCUREMENT, ACQUISITION AND CONSTRUCTION

(INCLUDING RESCISSION)

For an additional amount for ''Procurement, Acquisition and Construction'' for emergency expenses resulting from homeland security activities, $7,200,000 for a supercomputer backup, to remain available until September 30, 2003: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

Of the amounts made available under this heading for the National Polar-Orbiting Operational Environmental Satellite System, $8,100,000 are rescinded.

FISHERIES FINANCE PROGRAM ACCOUNT

Funds provided under the heading, ''Fisheries Finance Program Account'', National Oceanic and Atmospheric Administration, Department of Commerce, for the direct loan program authorized by the Merchant Marine Act of 1936, as amended, are available to subsidize gross obligations for the principal amount of direct loans not to exceed $5,000,000 for Individual Fishing Quota loans, and not to exceed $19,000,000 for Traditional loans.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'' for emergency expenses resulting from new homeland security activities, $400,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

THE JUDICIARY

SUPREME COURT OF THE UNITED STATES

CARE OF THE BUILDING AND GROUNDS

For an additional amount for ''Care of the Building and Grounds'' for emergency expenses for security upgrades and renovations of the Supreme Court building, $10,000,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'' for emergency expenses to enhance security and to provide for extraordinary trial related costs, $9,684,000, to remain available until expended: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

DEPARTMENT OF STATE AND RELATED AGENCY

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

DIPLOMATIC AND CONSULAR PROGRAMS

For an additional amount for ''Diplomatic and Consular Programs,'' for emergency expenses for activities related to combating international terrorism, $38,300,000, of which $20,300,000 shall remain available until September 30, 2003: Provided, That funds appropriated by this paragraph shall be available notwithstanding section 15 of the State Department Basic Authorities Act of 1956, as amended: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

EDUCATIONAL AND CULTURAL EXCHANGE PROGRAMS

For an additional amount for ''Educational and Cultural Exchange Programs'', for emergency expenses for activities related to combating international terrorism, $9,000,000: Provided, That funds appropriated by this paragraph shall be available notwithstanding section 15 of the State Department Basic Authorities Act of 1956, as amended: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

EMBASSY SECURITY, CONSTRUCTION, AND MAINTENANCE

For an additional amount for ''Embassy Security, Construction, and Maintenance'', for emergency expenses for activities related to combating international terrorism, $210,516,000, to remain available until expended: Provided, That $210,516,000 shall be available notwithstanding section 15 of the State Department Basic Authorities Act of 1956, as amended: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

INTERNATIONAL ORGANIZATIONS AND CONFERENCES

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

For an additional amount for ''Contributions to International Organizations'', for emergency expenses for activities related to combating international terrorism, $7,000,000, to remain available until September 30, 2003: Provided, That funds appropriated by this paragraph shall be available notwithstanding section 15 of the State Department Basic Authorities Act of 1956, as amended: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

CONTRIBUTIONS FOR INTERNATIONAL PEACEKEEPING ACTIVITIES

(RESCISSION)

Of the amounts made available under this heading, $48,000,000 are rescinded from prior year appropriations.

RELATED AGENCY

BROADCASTING BOARD OF GOVERNORS

INTERNATIONAL BROADCASTING OPERATIONS

For an additional amount for ''International Broadcasting Operations'', for emergency expenses for activities related to combating international terrorism, $7,400,000, to remain available until September 30, 2003: Provided, That funds appropriated by this paragraph shall be available notwithstanding section 15 of the State Department Basic Authorities Act of 1956, as amended: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

RELATED AGENCIES

SECURITIES AND EXCHANGE COMMISSION

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'' to respond to the September 11, 2001, terrorist attacks on the United States and for other purposes, $29,300,000, to remain available until expended: Provided, That $9,300,000 is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

GENERAL PROVISIONS, THIS CHAPTER

SEC. 201. Title II of Public Law 107–77 is amended in the second undesignated paragraph under the heading ''Department of Commerce, National Institute of Standards and Technology, Industrial Technology Services'' by striking ''not to exceed $60,700,000 shall be available for the award of new grants'' and inserting ''not less than $60,700,000 shall be used before October 1, 2002 for the award of new grants''.

SEC. 202. None of the funds appropriated or otherwise made available by this Act or any other Act may be used to implement, enforce, or otherwise abide by the Memorandum of Agreement signed by the Federal Trade Commission and the Antitrust Division of the Department of Justice on March 5, 2002.

SEC. 203. (a) Section 504 of title 28, United States Code, is amended by inserting after ''General'' the following: ''and a Principal Associate Deputy Attorney General for Combating Terrorism''.

(b) The Section heading for section 504 of title 28, United States Code, is amended by inserting after ''General'' the following: ''and Principal Associate Deputy Attorney General for Combating Terrorism''.

(c) The Principal Associate Deputy Attorney General for Combating Terrorism (appointed under section 504 of title 28, United States Code, as amended by subsection (a)) shall—

(1) serve as the principal adviser to the Attorney General and the Deputy Attorney General for combating terrorism, counterterrorism, and antiterrorism policy;

(2) have responsibility for coordinating all functions within the Department of Justice relating to combating domestic terrorism, subject to paragraph (5), including—

(A) policies, plans, and oversight, as they relate to combating terrorism, counterterrorism, and antiterrorism activities;

(B) State and local preparedness for terrorist events;

(C) contingency operations within the Department of Justice; and

(D) critical infrastructure;

(3) coordinate—

(A) all inter-agency interface between the Department of Justice and other departments, agencies, and entities of the United States, including State and local organizations, engaged in combating terrorism, counterterrorism, and antiterrorism activities; and

(B) the implementation of the Department of Justice's strategy for combating terrorism by State and local law enforcement with responsibilities for combating domestic terrorism;

(4) recommend changes in the organization and management of the Department of Justice and State and local entities engaged in combating domestic terrorism to the Attorney General and Deputy Attorney General; and

(5) serve in an advisory capacity to the Attorney General and Deputy Attorney General on matters pertaining to the allocation of resources for combating terrorism.

(d) The allocation of resources for combating terrorism shall remain under the purview of the current Deputy Attorney General. Any changes in the allocation of resources will continue to be approved by the current Deputy Attorney General using the current procedures of the Department of Justice.

(e) Effective upon enactment of this Act, there is transferred to the Principal Associate Deputy Attorney General for Combating Terrorism all authorities, liabilities, funding, personnel, equipment, and real property employed or used by, or associated with, the Office of Domestic Preparedness, the National Domestic Preparedness Office, the Executive Office of National Security, and such appropriate components of the Office of Intelligence Policy and Review and the National Institute of Justice as relate to combating terrorism, counterterrorism, and antiterrorism activities.

SEC. 204. Public Law 106–256 is amended in section 3(f)(1) by striking ''18'' and inserting ''29''.

SEC. 205. The American Section, International Joint Commission, United States and Canada, is authorized to receive funds from the United States Army Corps of Engineers for the purposes of conducting investigations, undertaking studies, and preparing reports in connection with a reference to the International Joint Commission on the Devils Lake project mentioned in Public Law 106–377.

SEC. 206. Section 282(a)(2)(D) of the Agricultural Marketing Act of 1946 is amended to read as follows:

''(D) in the case of wild fish, is—

''(i) harvested in the United States, a territory of the United States, or a State, or by a vessel that is documented under chapter 121 of title 46, United States Code, or registered in the United States; and

''(ii) processed in the United States, a territory of the United States, or a State, including the waters thereof, or aboard a vessel that is documented under chapter 121 of title 46, United States Code, or registered in the United States; and''.

SEC. 207. Of the amounts appropriated in Public Law 107–77, under the heading ''Department of Commerce, National Oceanic and Atmospheric Administration, Operations, Research, and Facilities'', for coral reef programs, $2,500,000, for a cooperative agreement with the National Defense Center of Excellence for Research in Ocean Sciences to conduct coral mapping in the waters of the Hawaiian Islands and the surrounding Exclusive Economic Zone in accordance with the mapping implementation strategy of the United States Coral Reef Task Force.

SEC. 208. In addition to amounts appropriated or otherwise made available by this Act or any other Act, $11,000,000 is appropriated to enable the Secretary of Commerce to provide economic assistance to fishermen and fishing communities affected by Federal closures and fishing restrictions in the New England groundfish fishery, to remain available until September 30, 2003.

SEC. 209. In addition to amounts appropriated or otherwise made available by this Act or any other Act, $5,000,000 shall be provided to enable the Secretary of Commerce to provide for direct economic assistance to fishermen and fishing communities, affected by Federal Court ordered management measures in the Northeast multispecies fishery, to remain available until September 30, 2003: Provided, That these amounts shall be used to support port security and related coastal activities administered by the National Oceanic and Atmospheric Administration, the Coast Guard, or an affected state.

SEC. 210. Of the amounts appropriated in Public Law 107–77, under the heading ''Department of Commerce, National Oceanic and Atmospheric Administration, Operations, Research, and Facilities'', for Oregon groundfish cooperative research, $500,000 shall be for the cost of a reduction loan of $50,000,000 as authorized under sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g) to carry out a West Coast groundfish fishing capacity reduction program under section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b)).

SEC. 211. (a) Subject to subsection (b), the Attorney General shall, out of appropriations available to the Department of Justice made in Public Law 107–77, transfer to, and merge with, the appropriations account for the Immigration and Naturalization Service entitled ''Salaries and Expenses'' the following amounts for the following purposes:

(1) $4,900,000 to cover an increase in pay for all Border Patrol agents who have completed at least one year's service and are receiving an annual rate of basic pay for positions at GS–9 of the General Schedule under section 5332 of title 5, United States Code, from the annual rate of basic pay payable for positions at GS–9 of the General Schedule under such section 5332, to an annual rate of basic pay payable for positions at GS–11 of the General Schedule under such section 5332; and

(2) $3,800,000 to cover an increase in pay for all immigration inspectors who have completed at least one year's service and are receiving an annual rate of basic pay for positions at GS–9 of the General Schedule under section 5332 of title 5, United States Code, from the annual rate of basic pay payable for positions at GS–9 of the General Schedule under such section 5332, to an annual rate of basic pay payable for positions at GS–11 of the General Schedule under such section 5332.

(b) Funds transferred under subsection (a) shall be available for obligation and expenditure only in accordance with the procedures applicable to reprogramming notifications set forth in section 605 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002 (Public Law 107–77; 115 Stat. 798).

(c) Not later than September 30, 2002, the Justice Management Division of the Department of Justice shall submit a report to the Committees on Appropriations of the Senate and the House of Representatives describing the progress made in the development of the Chimera system.

(d) No funds available to the Immigration and Naturalization Service for technology activities in the fiscal year 2003 may be obligated or expended unless the program manager of the Chimera system approves the obligation or expenditure of those funds and so reports to the Attorney General.

SEC. 212. Amounts appropriated by title V of Public Law 107–77 under the heading ''NATIONAL VETERANS BUSINESS DEVELOPMENT CORPORATION'' (115 Stat. 795) shall remain available until expended.

SEC. 213. Of the funds made available under the heading ''Courts of Appeals, District Courts, and Other Judicial Services, Salaries, and Expenses'' in title III of Public Law 107–77, $37,900,000 shall be transferred to, and merged with, funds available for ''Salaries and Expenses, United States Marshals Service'' in title I of Public Law 107–77, to be available until expended only for hiring 200 additional Deputy United States Marshals and associated support staff for protection of the judicial process in response to the terrorist attacks of September 11, 2001 to be deployed to the Federal districts with critical courtroom and prisoner security needs.

CHAPTER 3

DEPARTMENT OF DEFENSE

MILITARY PERSONNEL

MILITARY PERSONNEL, AIR FORCE

For an additional amount for ''Military Personnel, Air Force'', $206,000,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

OPERATION AND MAINTENANCE

DEFENSE EMERGENCY RESPONSE FUND

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for the ''Defense Emergency Response Fund'', $11,300,000,000, of which $77,900,000 shall be available for enhancements to North American Air Defense Command capabilities: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That the Secretary of Defense may transfer the funds provided herein only to appropriations for military personnel; operation and maintenance; procurement; research, development, test and evaluation; military construction; the Defense Health Program; and working capital funds: Provided further, That the funds transferred shall be merged with and shall be available for the same purposes and for the same time period as the appropriation to which transferred: Provided further, That the transfer authority provided in this paragraph is in addition to any other transfer authority available to the Department of Defense: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

OPERATION AND MAINTENANCE, ARMY

For an additional amount for ''Operation and Maintenance, Army'', $107,000,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

OPERATION AND MAINTENANCE, NAVY

For an additional amount for ''Operation and Maintenance, Navy'', $36,500,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for ''Operation and Maintenance, Air Force'', $41,000,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

OPERATION AND MAINTENANCE, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Operation and Maintenance, Defense-wide'', $739,000,000, of which $420,000,000 may be used for payments to Pakistan, Jordan, the Philippines, and other key cooperating nations for logistical and military support provided to United States military operations in connection with United States efforts to prevent or respond to acts of international terrorism: Provided, That such amount shall be transferred to, and merged with, funds appropriated in Public Law 107–115 under the heading ''Foreign Military Financing Program'' within 30 days of enactment: Provided further, That such payments may be made in such amounts as the Secretary of State determines, after consultation with the Secretary of Defense and the Director of the Office of Management and Budget: Provided further, That such determination shall be final and conclusive upon the accounting officers of the United States: Provided further, That of the funds appropriated by this paragraph, not less than $50,000,000 shall be made available for the Philippines: Provided further, That amounts for such payments shall be in addition to any other funds that may be available for such purpose: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That funds made available by this paragraph shall be subject to the regular notification procedures of the Committees on Appropriations.

PROCUREMENT

OTHER PROCUREMENT, ARMY

For an additional amount for ''Other Procurement, Army'', $79,200,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

AIRCRAFT PROCUREMENT, NAVY

For an additional amount for ''Aircraft Procurement, Navy'', $22,800,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

PROCUREMENT OF AMMUNITION, NAVY AND MARINE CORPS

For an additional amount for ''Procurement of Ammunition, Navy and Marine Corps'', $262,000,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

OTHER PROCUREMENT, NAVY

For an additional amount for ''Other Procurement, Navy'', $2,500,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

PROCUREMENT, MARINE CORPS

For an additional amount for ''Procurement, Marine Corps'', $3,500,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

AIRCRAFT PROCUREMENT, AIR FORCE

For an additional amount for ''Aircraft Procurement, Air Force'', $93,000,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

PROCUREMENT OF AMMUNITION, AIR FORCE

For an additional amount for ''Procurement of Ammunition, Air Force'', $115,000,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

OTHER PROCUREMENT, AIR FORCE

For an additional amount for ''Other Procurement, Air Force'', $752,300,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

PROCUREMENT, DEFENSE-WIDE

For an additional amount for ''Procurement, Defense-wide'', $99,500,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, ARMY

For an additional amount for ''Research, Development, Test and Evaluation, Army'', $8,200,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY

For an additional amount for ''Research, Development, Test and Evaluation, Navy'', $19,000,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE

For an additional amount for ''Research, Development, Test and Evaluation, Air Force'', $60,800,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

For an additional amount for ''Research, Development, Test and Evaluation, Defense-wide'', $74,700,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

GENERAL PROVISIONS, THIS CHAPTER

SEC. 301. (a) The appropriation under the heading ''Research, Development, Test and Evaluation, Navy'' in the Department of Defense Appropriations Act, 2002 (Public Law 107–117) is amended by adding the following proviso immediately after ''September 30, 2003'': '': Provided, That funds appropriated in this paragraph which are available for the V–22 may be used to meet unique requirements of the Special Operations Forces''.

(b) The amendment made by subsection (a) shall be effective as if enacted as part of the Department of Defense Appropriations Act, 2002.

SEC. 302. (a) AVAILABILITY OF AMOUNTS FOR MILITARY CONSTRUCTION RELATING TO TERRORISM.—Amounts made available to the Department of Defense from funds appropriated in this Act may be used to carry out military construction projects, not otherwise authorized by law, that the Secretary of Defense determines are necessary to respond to or protect against acts or threatened acts of terrorism.

(b) NOTICE TO CONGRESS.—Not later than 15 days before obligating amounts available under subsection (a) for military construction projects referred to in that subsection, the Secretary shall notify the appropriate committees of Congress of the following:

(1) the determination to use such amounts for the project; and

(2) the estimated cost of the project and the accompanying Form 1391.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section the term ''appropriate committees of Congress'' has the meaning given that term in section 2801(4) of title 10, United States Code.

SEC. 303. Section 8052(b) of the Department of Defense Appropriations Act, 2002 (Public Law 107–117) is amended by striking out ''will reduce the personnel requirements or financial requirements of the department'', and inserting the following in lieu thereof, ''either (1) will reduce the personnel requirements or the financial requirements of the department, or (2) is necessary in response to an emergency, including responding to direct threats or incidents of terrorism''.

SEC. 304. Funds appropriated by this Act, or made available by the transfer of funds in this Act, for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414): Provided, That any funds appropriated or transferred to the Central Intelligence Agency for agent operations or covert action programs authorized by the President under section 503 of the National Security Act of 1947, as amended, shall remain available until September 30, 2003.

SEC. 305. (a) Funds appropriated to the Department of Defense for fiscal year 2002 for operation and maintenance under the heading ''Chemical Agents and Munitions Destruction, Army'', may be used to pay for additional costs of international inspectors from the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons, pursuant to Articles IV and V of the Chemical Weapons Convention, for inspections and monitoring of Department of Defense sites and commercial sites that perform services under contract to the Department of Defense, resulting from the Department of Defense's program to accelerate its chemical demilitarization schedule.

(b) Expenses which may be paid under subsection (a) include—

(1) salary costs for performance of inspection and monitoring duties;

(2) travel, including travel to and from the point of entry into the United States and internal United States travel;

(3) per diem, not to exceed United Nations rates and in compliance with United Nations conditions for per diem for that organization; and

(4) expenses for operation and maintenance of inspection and monitoring equipment.

SEC. 306. During the current fiscal year, the restrictions contained in subsection (d) of 22 U.S.C. 5952 and section 502 of the Freedom Support Act (Public Law 102–511) shall not apply if the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that waiving such restrictions is important to the national security interests of the United States.

SEC. 307. The Secretary of the Army shall obligate and expend the $2,000,000 appropriated for the Army by Public Law 107–117 for procurement of smokeless nitrocellulose under Activity 1, instead under Activity 2, Production Base Support Industrial Facilities, for the purpose of preserving a commercially owned and operated capability of producing defense grade nitrocellulose at the rate of at least 10,000,000 pounds per year in order to preserve a commercial manufacturing capability for munitions precursor supplies for the High Zone Modular Artillery Charge System and to preserve competition in that manufacturing capability.

SEC. 308. Not later than 15 days after the date of the enactment of this Act, the Secretary of Defense shall obligate, from funds made available in title II of division A of Public Law 107–117 under the heading ''Operation and Maintenance, Defense-Wide'' (115 Stat. 2233), $4,000,000 for a grant to support the conversion of the Naval Security Group, Winter Harbor (the naval base on Schoodic Peninsula), Maine, to utilization as a research and education center for Acadia National Park, Maine, including the preparation of a plan for the reutilization of the naval base for such purpose that will benefit communities in the vicinity of the naval base and visitors to Acadia National Park and will stimulate important research and educational activities.

SEC. 309. Of the amount available for fiscal year 2002 for the Army National Guard for operation and maintenance, $2,200,000 shall be made available for the Army National Guard for information operations, information assurance operations, and training for such operations.

CHAPTER 4

DISTRICT OF COLUMBIA

FEDERAL FUNDS

FEDERAL PAYMENT TO THE CHILDREN'S NATIONAL MEDICAL CENTER

For a Federal payment to the Children's National Medical Center in the District of Columbia for implementing the District Emergency Operations Plan, $13,770,000, to remain available until September 30, 2003, of which $11,700,000 is for the expansion of quarantine facilities, and $2,070,000 is for the establishment of a decontamination facility for children and families: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA

For a Federal payment to the District of Columbia to implement the District Emergency Operations Plan, $24,730,000, to remain available until December 1, 2003, of which $14,730,000 is for public safety expenses related to national special security events in the District of Columbia and $10,000,000 is for the construction of Containment Facilities to support the regional Bioterrorism Hospital Preparedness Program: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

FEDERAL PAYMENT TO THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

For a Federal payment to the Washington Metropolitan Area Transit Authority, $25,000,000, to remain available until December 1, 2003, to contribute to the creation of a regional transportation back-up operations control center: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

FEDERAL PAYMENT TO THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS

For a Federal payment to the Metropolitan Washington Council of Governments, $1,750,000, to remain available until September 30, 2003, for support of the Regional Incident Communication and Coordination System, as approved by the Council: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

FEDERAL PAYMENT TO THE WATER AND SEWER AUTHORITY OF THE DISTRICT OF COLUMBIA

For a Federal payment to the Water and Sewer Authority of the District of Columbia for emergency preparedness, $3,000,000, to remain available until September 30, 2003, of which $250,000 shall be for securing fire hydrants and manholes to prevent unauthorized entry, $150,000 is to upgrade the hydraulic model, $1,800,000 is for remote monitoring of water quality, $700,000 is for design and construction of ventilation system improvements, and $100,000 is to create an Incident Response Plan: Provided, That the Water and Sewer Authority of the District of Columbia may reprogram up to $120,000 between the activities specified under this heading if it notifies in writing the Committees on Appropriations of the House of Representatives and the Senate thirty days in advance of the reprogramming: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

DISTRICT OF COLUMBIA FUNDS

OPERATING EXPENSES

PUBLIC EDUCATION SYSTEM

(RESCISSION)

Notwithstanding any other provision of law, of the local funds appropriated under this heading for public charter schools for the fiscal year ending September 30, 2002 in the District of Columbia Appropriations Act, 2002, approved December 21, 2001 (Public Law 107–96), $37,000,000 are rescinded.

HUMAN SUPPORT SERVICES

For an additional amount for ''Human Support Services'', $37,000,000 from local funds: Provided, That $11,000,000 shall be for the Child and Family Services Agency to address increased adoption case rates, higher case loads for adoption and emergency group home utilization: Provided further, That $26,000,000 shall be for the Department of Mental Health to address a Medicaid revenue shortfall.

PUBLIC SAFETY AND JUSTICE

(RESCISSION)

Notwithstanding any other provision of law, of the local funds appropriated under this heading to the Department of Corrections for support of the Corrections Information Council in the District of Columbia Appropriations Act, 2002 (Public Law 107–96), $100,000 are rescinded.

CORRECTIONS INFORMATION COUNCIL

For operations of the Corrections Information Council, $100,000 from local funds.

GOVERNMENTAL DIRECTION AND SUPPORT

The Governmental Direction and Support paragraph of the District of Columbia Appropriations Act, 2002 (Public Law 107–96), is amended by striking: ''Provided further, That not less than $353,000 shall be available to the Office of the Corporation Counsel to support increases in the Attorney Retention Allowance:'' and inserting: ''Provided further, That not less than $353,000 shall be available to the Office of the Corporation Counsel to support attorney compensation consistent with performance measures contained in a negotiated collective bargaining agreement:''.

REPAYMENT OF LOANS AND INTEREST

(RESCISSION)

Of the funds appropriated under this heading for the fiscal year ending September 30, 2002 in the District of Columbia Appropriations Act, 2002, approved December 21, 2001 (Public Law 107–96), $7,950,000 are rescinded.

The paragraph under this heading is amended by striking: ''Provided, That any funds set aside pursuant to section 148 of the District of Columbia Appropriations Act, 2000 (Public Law 106–113; 113 Stat. 1523) that are not used in the reserve funds established herein shall be used for Pay-As-You-Go Capital Funds:'' and inserting: ''Provided, That any funds set aside pursuant to section 148 of the District of Columbia Appropriations Act, 2000 (Public Law 106–113; 113 Stat. 1523) that are not used in the reserve funds established herein shall be used for Pay-As-You-Go Capital Funds upon certification by the Chief Financial Officer of the District of Columbia that the funds are available and are not required to address potential deficits: Provided further, That of those funds necessary to address potential deficits, no funds shall be obligated or expended except in accordance with the following conditions:

''(1) the amounts shall be obligated or expended in accordance with laws enacted by the Council in support of each such obligation or expenditure;

''(2) the amounts may not be used to fund the agencies of the District of Columbia government under court-ordered receivership;

''(3) the amounts may be obligated or expended only if the Mayor notifies the Committees on Appropriations of the House of Representatives and Senate in writing 30 days in advance of any obligation or expenditure; and

''(4) amounts made available to address potential deficits shall remain available until expended:''.

CERTIFICATES OF PARTICIPATION

For principal and interest payments on the District's Certificates of Participation, issued to finance the facility underlying the building located at One Judiciary Square, $7,950,000 from local funds.

GENERAL PROVISIONS, THIS CHAPTER

SEC. 401. The District of Columbia may use up to 1 percent of the funds appropriated to the District of Columbia under the Emergency Supplemental Act, 2002, to fund the necessary administrative costs to carry out that Act, effective January 10, 2002.

SEC. 402. When the Mayor determines that it is in the best interest of the District, the Mayor may procure insurance for property damage and tort liability. In addition, when the Chief Financial Officer determines that it is in the best interest of the District, the Chief Financial Officer may procure insurance subject to his independent procurement authority or otherwise recommend the procurement of insurance for financial losses resulting from misfeasance or malfeasance.

SEC. 403. CRIME VICTIMS COMPENSATION FUND. Section 16(d)(2) of the Victims of Violent Crime Compensation Act of 1996 (D.C. Official Code 4–515(d)(1)), as amended by the Fiscal Year 2002 District of Columbia Appropriations Act, Public Law 107–96, is amended to read as follows:

''(2) 50 percent of such balance shall be transferred from the Fund to the executive branch of the District government and shall be used without fiscal year limitation for outreach activities designed to increase the number of crime victims who apply for such direct compensation payments.''.

SEC. 404. WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY REPROGRAMMING. The Chief Financial Officer of the Washington Metropolitan Area Transit Authority may use up to $2,400,000 from funds appropriated under Public Law 107–117 under the account, ''Federal Payment to the Washington Metropolitan Area Transit Authority'', that contains funds for protective clothing and breathing apparatus activities, for employee and facility security and completion of the fiber optic network project.

SEC. 405. TRANSFER AUTHORITY FOR THE DISTRICT OF COLUMBIA COURTS. The District of Columbia Courts may expend up to $12,500,000 to carry out the District of Columbia Family Court Act of 2001 from the ''Federal Payment to the District of Columbia Courts'' account: Provided, That such funds may be transferred to the ''Federal Payment to the District of Columbia Courts'' account from the ''Federal Payment for Family Court Act'' account in reimbursement for such obligations and expenditures as are necessary to implement the District of Columbia Family Court Act of 2001 for the period from October 1, 2001 to September 30, 2002, once funds in

the ''Federal Payment for Family Court Act'' account become available.

SEC. 406. TECHNICAL CORRECTION TO THE DISTRICT OF COLUMBIA FAMILY COURT ACT OF 2001. Section 11–908A(b)(4) of the District of Columbia Code (as added by Public Law 107–114) is amended by striking ''section 11–1501(b)'' and inserting ''section 433 of the District of Columbia Home Rule Act''.

SEC. 407. TECHNICAL CORRECTION TO THE FISCAL YEAR 2002 DISTRICT OF COLUMBIA APPROPRIATIONS ACT. (a) Under the heading, ''Federal Payment to the Thurgood Marshall Academy Charter School'' provided under Public Law 107–96, strike ''Anacostia'' and insert ''Southeast, Washington, D.C.''.

(b) Under the heading, ''Federal Payment to Southeastern University'' provided under Public Law 107–96, strike everything after ''a public/private partnership'' and insert in lieu thereof, ''to plan a two year associate degree program.''.

SEC. 408. TECHNICAL CORRECTION TO THE FISCAL YEAR 2002 DISTRICT OF COLUMBIA APPROPRIATIONS ACT. Section 119 of Public Law 107–96 is amended to read as follows:

''SEC. 119. ACCEPTANCE AND USE OF GRANTS NOT INCLUDED IN CEILING. (a) IN GENERAL.—Notwithstanding any other provision of this Act, the Mayor, in consultation with the Chief Financial Officer, may accept, obligate, and expend Federal, private, and other grants received by the District government that are not reflected in the amounts appropriated in this Act.

''(b) REQUIREMENT OF CHIEF FINANCIAL OFFICER REPORT AND COUNCIL APPROVAL.—No such Federal, private, or other grant may be accepted, obligated, or expended pursuant to subsection (a) until—

''(1) the Chief Financial Officer of the District of Columbia submits to the Council a report setting forth detailed information regarding such grant; and

''(2) the Council has reviewed and approved the acceptance, obligation, and expenditure of such grant. Within 14 calendar days of receipt of the report submitted under paragraph (1) the Council shall be deemed to have provided such approval if no written notice of disapproval is filed with the Secretary to the Council within 14 calendar days of the receipt of the report from the Chief Financial Officer, and no oral notice of disapproval is given during a meeting of the Council during such 14 calendar day period. If notice of disapproval is given during such initial 14 calendar day period, the Council may approve or disapprove the acceptance, obligation or expenditure of the grant by resolution within 30 calendar days of the initial receipt of the report from the Chief Financial Officer, or such certification shall be deemed to be approved.

''(c) PROHIBITION ON SPENDING IN ANTICIPATION OF APPROVAL OR RECEIPT.—No amount may be obligated or expended from the general fund or other funds of the District government in anticipation of the approval or receipt of a grant under subsection (a) or in anticipation of the approval or receipt of a Federal, private, or other grant not subject to these provisions.

''(d) QUARTERLY REPORTS.—The Chief Financial Officer of the District of Columbia shall prepare a quarterly report setting forth detailed information regarding all Federal, private, and other grants subject to these provisions. Each such report shall be submitted to the Council of the District of Columbia, and to the Committees on Appropriations of the House of Representatives and the Senate, not later than 15 days after the end of the quarter covered by the report.''.

SEC. 409. The authority which the Chief Financial Officer of the District of Columbia exercised with respect to personnel, procurement, and the preparation of fiscal impact statements during a control period (as defined in Public Law 104–8) shall remain in effect through July 1, 2003 or until such time as the District of Columbia Fiscal Integrity Act becomes effective, whichever occurs sooner.

CHAPTER 5

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

OPERATION AND MAINTENANCE, GENERAL

For an additional amount for ''OPERATION AND MAINTENANCE, GENERAL'', $32,000,000, to remain available until expended: Provided, That using the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to repair, restore, and clean-up Corps' projects and facilities and dredge navigation channels, restore and clean out area streams, provide emergency streambank protection, restore other crucial public infrastructure (including sewer and water facilities), document flood impacts and undertake other flood recovery efforts deemed necessary and advisable by the Chief of Engineers: Provided further, That $10,000,000 of the funds provided shall be for Southern West Virginia, Eastern Kentucky, and Southwestern Virginia: Provided further, That the remaining $22,000,000 is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That these additional funds shall be available for Western Illinois, Eastern Missouri, and the Upper Peninsula of Michigan.

For emergency expenses to respond to the September 11, 2001, terrorist attacks on the United States, for ''Flood Control, Mississippi River and Tributaries, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee'', $6,500,000, to remain available until expended, to be obligated from amounts made available in Public Law 107–117, Corps of Engineers—Civil, Operations and Maintenance, General: Provided, That $6,500,000 is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

DEPARTMENT OF ENERGY

ATOMIC ENERGY DEFENSE ACTIVITIES

NATIONAL NUCLEAR SECURITY ADMINISTRATION

WEAPONS ACTIVITIES

For an additional amount for ''Weapons Activities'' for emergency expenses resulting from the September 11, 2001, terrorist attacks, $181,650,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

DEFENSE NUCLEAR NONPROLIFERATION

For an additional amount for ''Defense Nuclear Nonproliferation'' for emergency activities necessary to support the safeguarding of nuclear material internationally, $100,000,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

OFFICE OF THE ADMINISTRATOR

For an additional amount for ''Office of the Administrator'' for emergency expenses resulting from the September 11, 2001, terrorist attacks, $1,750,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES

DEFENSE ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT

For an additional amount for ''Defense Environmental Restoration and Waste Management'' for emergency expenses resulting from the September 11, 2001, terrorist attacks, $40,000,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

OTHER DEFENSE ACTIVITIES

For an additional amount for ''Other Defense Activities'' for emergency expenses necessary to support energy security and assurance activities, $7,000,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

GENERAL PROVISIONS, THIS CHAPTER

(RESCISSION)

SEC. 501. (a) Of the non-defense funds made available to the Secretary of Energy under the headings ''Energy Supply'', ''Non-Defense Environmental Management'', ''Science'', ''Nuclear Waste Disposal'', and ''Departmental Administration'' in Public Law 107–66, $30,000,000 are rescinded.

(b) Within 30 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a listing of the amounts by account of the reductions made pursuant to the provisions of subsection (a) of this section.

SEC. 502. The amounts invested by the non-Federal interests in the biomass project at Winona, Mississippi, before the date of enactment of this Act shall constitute full satisfaction of the cost-sharing requirement under section 3002 of the Energy Policy Act of 1992 (42 U.S.C. 13542).

SEC. 503. Section 1 of Public Law 105–204 (112 Stat. 681) is amended—

(1) in subsection (b), by striking ''until the date'' and all that follows and inserting ''until the date that is 30 days after the date on which the Secretary of Energy awards a contract under subsection (c), and no such amounts shall be available for any purpose except to implement the contract.''; and

(2) by striking subsection (c) and inserting the following:

''(c) CONTRACTING REQUIREMENTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law (except section 1341 of title 31, United States Code), the Secretary of Energy shall—

''(A) not later than 10 days after the date of enactment of this paragraph, request offerors whose proposals in response to Request for Proposals No. DE–RP05–010R22717 ('Acquisition of Facilities and Services for Depleted Uranium Hexalfluoride (DUF6) Conversion Project') were included in the competitive range as of January 15, 2002, to confirm or reinstate the offers in accordance with this paragraph, with a deadline for offerors to deliver reinstatement or confirmation to the Secretary of Energy not later than 20 days after the date of enactment of this paragraph; and

''(B) not later than 30 days after the date of enactment of this paragraph, select for award of a contract the best value of proposals confirmed or reinstated under subparagraph (A), and award a contract for the scope of work stated in the Request for Proposals, including the design, construction, and operation of—

''(i) a facility described in subsection (a) on the site of the gaseous diffusion plant at Paducah, Kentucky; and

''(ii) a facility described in subsection (a) on the site of the gaseous diffusion plant at Portsmouth, Ohio.

''(2) CONTRACT TERMS.—Notwithstanding any other provision of law (except section 1341 of title 31, United States Code) the Secretary of Energy shall negotiate with the awardee to modify the contract awarded under paragraph (1) to—

''(A) require, as a mandatory item, that groundbreaking for construction occur not later than July 31, 2004, and that construction proceed expeditiously thereafter;

''(B) include as an item of performance the transportation, conversion, and disposition of depleted uranium contained in cylinders located at the Oak Ridge K–25 uranium enrichment facility located in the East Tennessee Technology Park at Oak Ridge, Tennessee, consistent with environmental agreements between the State of Tennessee and the Secretary of Energy; and

''(C) specify that the contractor shall not proceed to perform any part of the contract unless sufficient funds have been appropriated, in advance, specifically to pay for that part of the contract.

''(3) CERTIFICATION OF GROUNDBREAKING.—Not later than 5 days after the date of groundbreaking for each facility, the Secretary of Energy shall submit to Congress a certification that groundbreaking has occurred.

''(d) FUNDING.—

''(1) IN GENERAL.—For purposes of carrying out this section, the Secretary of Energy may use any available appropriations (including transferred unobligated balances).

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, in addition to any funds made available under paragraph (1), such sums as are necessary to carry out this section.''.

SEC. 504. In addition to amounts previously appropriated, $3,000,000 is hereby appropriated for the Department of the Interior, Bureau of Reclamation, for ''Water and Related Resources'' for the drilling of emergency wells in Santa Fe, New Mexico and shall remain available until expended.

CHAPTER 6

BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

CHILD SURVIVAL AND HEALTH PROGRAMS FUND

For an additional amount for the ''Child Survival and Health Programs Fund'', $200,000,000, to remain available until expended: Provided, That such funds shall be made available only for programs for the prevention, treatment, and control of, and research on, HIV/AIDS: Provided further, That special emphasis shall be given to assistance directed at the prevention of transmission of HIV/AIDS from mother to child, including medications to prevent such transmission: Provided further, That of the funds appropriated by this paragraph, the President, in consultation with the Secretary of State, may make such contribution as the President considers appropriate to the Global Fund to Fight AIDS, Tuberculosis, and Malaria to be used for any of the purposes of the Global Fund: Provided further, That funds appropriated by this paragraph, other than those made available as a contribution to the Global Fund, shall not exceed the total resources provided, including on an in-kind basis, from other donors: Provided further, That not more than seven percent of the amount of the funds appropriated by this paragraph, in addition to funds otherwise available for such purpose, may be made available for the administrative costs of United States Government agencies in carrying out programs funded under this paragraph: Provided further, That funds appropriated by this paragraph shall be subject to the regular notification procedures of the Committees on Appropriations: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That the entire amount shall be available only to the extent that an official budget request that includes designation of the entire amount as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress.

INTERNATIONAL DISASTER ASSISTANCE

For an additional amount for ''International Disaster Assistance'', $150,000,000, to remain available until March 31, 2003: Provided, That funds appropriated by this paragraph shall be made available for emergency expenses for Afghanistan for humanitarian and reconstruction activities related to preventing or responding to international terrorism, including repairing homes of Afghan citizens that were damaged as a result of military operations against al Qaeda and the Taliban: Provided further, That of the funds appropriated by this paragraph that are available for Afghanistan, up to $2,500,000 may be made available, in addition to amounts otherwise available for such purposes, for administrative expenses of the United States Agency for International Development in support of the provision of such assistance: Provided further, That of the funds appropriated by this paragraph, $50,000,000 shall be made available for humanitarian, refugee and reconstruction assistance for the West Bank and Gaza: Provided further, That none of the funds provided in the preceding proviso shall be available for assistance for the Palestinian Authority: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That funds appropriated by this paragraph shall be subject to the regular notification procedures of the Committees on Appropriations.

OPERATING EXPENSES OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

For an additional amount for ''Operating Expenses of the United States Agency for International Development'' for emergency expenses for activities related to preventing or responding to international terrorism, $5,000,000, to remain available until March 31, 2003: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

OTHER BILATERAL ECONOMIC ASSISTANCE

ECONOMIC SUPPORT FUND

For an additional amount for ''Economic Support Fund'' for emergency expenses for activities related to preventing or responding to international terrorism, $700,000,000, to remain available until March 31, 2003: Provided, That of the funds appropriated by this paragraph, not less than $3,500,000 shall be made available to support programs and activities that provide professional training for journalists from Egypt and other countries in the Middle East: Provided further, That of the funds appropriated by this paragraph that are made available for assistance for Pakistan, not less than $3,500,000 shall be made available for programs and activities which support the development of independent media in Pakistan: Provided further, That of the funds appropriated by this paragraph, $50,000,000 should be made available for the Middle East Economic Initiative: Provided further, That of the funds appropriated by this paragraph, not less than $15,000,000 shall be made available for the establishment and administration of an international exchange visitor program for secondary school students from countries with significant Muslim populations: Provided further, That funds made available pursuant to the previous proviso shall not be available for any country that is eligible for assistance under the FREEDOM Support Act: Provided further, That of the funds appropriated by this paragraph, $200,000,000 shall be made available for assistance for Israel, all or a portion of which may be transferred to, and merged with, funds appropriated by this Act under the heading ''NONPROLIFERATION, ANTI-TERRORISM, DEMINING AND RELATED PROGRAMS'' for defensive, non-lethal anti-terrorism assistance in accordance with the provisions of chapter 8 of part II of the Foreign Assistance Act of 1961: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That funds appropriated under this heading, and funds appropriated under this heading in prior Acts that are made available for the purposes of this paragraph, may be made available notwithstanding section 512 of Public Law 107–115 or any similar provision of law: Provided further, That funds appropriated by this paragraph shall be subject to the regular notification procedures of the Committees on Appropriations.

ASSISTANCE FOR THE INDEPENDENT STATES OF THE FORMER SOVIET UNION

For an additional amount for ''Assistance for the Independent States of the Former Soviet Union'' for emergency expenses for activities related to preventing or responding to international terrorism, $110,000,000, to remain available until March 31, 2003: Provided, That funds appropriated by this paragraph shall be made available for assistance only for Uzbekistan, the Kyrgyz Republic, Tajikistan, Kazakstan, and Turkmenistan: Provided further, That of the funds appropriated by this paragraph, not less than $7,000,000 shall be made available for the development of democratic institutions and the protection of human rights, which amount shall be administered by the Bureau of Democracy, Human Rights and Labor, Department of State: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That funds appropriated by this paragraph shall be subject to the regular notification procedures of the Committees on Appropriations.

DEPARTMENT OF STATE

INTERNATIONAL NARCOTICS CONTROL AND LAW ENFORCEMENT

For an additional amount for ''International Narcotics Control and Law Enforcement'' for emergency expenses for activities related to preventing or responding to international terrorism, $104,000,000, to remain available until March 31, 2003: Provided, That of the funds appropriated by this paragraph, not less than $2,500,000 shall be made available for the Colombian National Park Service for training, equipment and related assistance for park rangers: Provided further, That of the funds appropriated by this paragraph, not to exceed $4,000,000 shall be made available for law enforcement training for Indonesian police forces: Provided further, That funds appropriated by this paragraph shall be subject to the regular notification procedures of the Committees on Appropriations: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

MIGRATION AND REFUGEE ASSISTANCE

For an additional amount for ''Migration and Refugee Assistance'' for emergency expenses for activities related to preventing and responding to international terrorism, $50,000,000, to remain available until March 31, 2003: Provided, That funds appropriated by this paragraph shall be subject to the regular notification procedures of the Committees on Appropriations.

NONPROLIFERATION, ANTI-TERRORISM, DEMINING AND RELATED PROGRAMS

For an additional amount for ''Nonproliferation, Anti-Terrorism, Demining and Related Programs'' for emergency expenses for activities related to preventing or responding to international terrorism, $93,000,000, to remain available until March 31, 2003: Provided, That of the funds appropriated by this paragraph, not less

than $10,000,000 shall be made available for humanitarian demining activities: Provided further, That of the funds appropriated by this paragraph, not to exceed $12,000,000 shall be made available for assistance for Indonesia: Provided further, That funds appropriated by this paragraph that are made available for assistance for Indonesia may be used only to train and equip an Indonesian police unit to prevent or respond to international terrorism, and none of the funds appropriated by this chapter may be used to provide assistance for members of ''Brimob'' Mobile Police Brigade units: Provided further, That of the funds appropriated by this paragraph, $2,000,000 shall be made available for small arms and light weapons destruction in Afghanistan: Provided further, That of the funds appropriated by this paragraph, $1,000,000 shall be made available for the Nonproliferation and Disarmament Fund: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That funds appropriated by this paragraph shall be subject to the regular notification procedures of the Committees on Appropriations.

MILITARY ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

FOREIGN MILITARY FINANCING PROGRAM

For an additional amount for ''Foreign Military Financing Program'' for emergency expenses for activities related to preventing or responding to international terrorism, $347,500,000, to remain available until March 31, 2003: Provided, That funds appropriated by this paragraph may be made available for assistance only for Afghanistan, Pakistan, Nepal, Jordan, Bahrain, Oman, Yemen, Uzbekistan, the Kyrgyz Republic, Tajikistan, Kazakhstan, Turkey, Georgia, the Philippines, Colombia, Djibouti, Ethiopia, Kenya, and Ecuador: Provided further, That funds appropriated by this paragraph should be made available to establish, train, and equip a Colombian Army brigade dedicated to providing security to civilian prosecutors in operations to collect evidence and execute arrest warrants against leaders of paramilitary organizations: Provided further, That of the funds appropriated by this paragraph, not to exceed $3,500,000 may be made available for assistance for the Colombian Armed Forces for purposes of protecting the Cano Limon pipeline: Provided further, That prior to the obligation of funds under the previous proviso, the Secretary of State shall determine and report to the Committee on Appropriations that (i) of the Government of Colombia's oil revenues from the Cano Limon pipeline, an appropriate percentage will be made available for primary health care, basic education, microenterprise, and other programs and activities to improve the lives of the people of Arauca department and that a transparent mechanism exists to effectively monitor such funds, and (ii) Occidental Petroleum and Repsol have each agreed in writing to refund to the United States Government an amount, based upon each company's financial interest in the pipeline, equal to the percentage that each such share represents of the amount of funds made available by this Act to the Colombian Armed Forces for purposes of protecting the Cano Limon pipeline: Provided further, That the amounts refunded pursuant to an agreement entered into pursuant to the previous proviso shall be made available for any of the programs and activities identified in clause (i) to improve the lives of the Colombian people without further appropriation by Congress: Provided further, That funds made available by this Act for assistance for Uzbekistan may be made available if the Secretary of State determines and reports to the Committees on Appropriations that Uzbekistan is making substantial and continuing progress in meeting its commitments under the ''Declaration on the Strategic Partnership and Cooperation Framework Between the Republic of Uzbekistan and the United States of America'': Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That funds appropriated by this paragraph that are made available for Afghanistan may be made available notwithstanding section 512 of Public Law 107–115 or any similar provision of law: Provided further, That funds appropriated by this paragraph shall be subject to the regular notification procedures of the Committees on Appropriations.

PEACEKEEPING OPERATIONS

For an additional amount for ''Peacekeeping Operations'' for emergency expenses for activities related to preventing or responding to international terrorism, $20,000,000, to remain available until March 31, 2003: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That funds appropriated by this paragraph shall be available only for Afghanistan, and may be made available notwithstanding section 512 of Public Law 107–115 or any similar provision of law: Provided further, That funds appropriated by this paragraph shall be subject to the regular notification procedures of the Committees on Appropriations.

MULTILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL FINANCIAL INSTITUTIONS

(RESCISSION)

The unobligated balances of funds provided in Public Law 92–301 and Public Law 93–142 for maintenance of value payments to international financial institutions are rescinded.

GENERAL PROVISIONS, THIS CHAPTER

SEC. 601. INTERNATIONAL ORGANIZATIONS AND PROGRAMS. Section 576 of Public Law 107–115 is amended—

(1) in subsection (a) by striking ''not more than''; and

(2) by adding the following new subsection:

''(d) OBLIGATION AND DISBURSEMENT.—Funds made available pursuant to subsection (a) shall be obligated and disbursed not later than July 10, 2002, unless otherwise prohibited by law.''.

SEC. 602. ELIGIBILITY CONDITIONS. (a) Prior to providing assistance to a government with funds appropriated by this chapter, the Secretary of State shall take into account whether such government has established, or is making substantial progress in establishing—

(1) the rule of law, political pluralism including the establishment of political parties, respect for fundamental human rights including freedoms of expression, religion and association, and the rights to due process, a fair trial, and equal protection under the law;

(2) democratic institutions, independent media, credible electoral processes, and conditions for the development of an active civil society;

(3) a market-based economy, and economic policies to reduce poverty and increase the availability of health care and educational opportunities; and

(4) effective mechanisms to combat corruption and bribery, such as signing and implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

(b) Nothing in this section shall apply to funds appropriated under this chapter for assistance for Afghanistan or under the heading ''International Disaster Assistance''.

SEC. 603. COLOMBIA. (a) COUNTER-TERRORISM AUTHORITY.—In fiscal year 2002, funds available to the Department of State under the heading ''Andean Counterdrug Initiative'' in Public Law 107–115 for assistance for the Colombian Armed Forces and the Colombian National Police, funds appropriated by this Act that are made available for such assistance, and unexpired balances and assistance previously provided from prior Acts making appropriations for foreign operations, export financing, and related programs for such assistance, shall be available to support the Colombian Government's unified campaign against narcotics trafficking and against paramilitary and guerrilla organizations designated as terrorist organizations in that country.

(b) In order to ensure the effectiveness of United States support for such unified campaign, prior to the exercise of the authority contained in subsection (a) to provide counter-terrorism assistance, the Secretary of State shall report to the appropriate congressional committees that—

(1) the newly elected President of Colombia has—

(A) committed, in writing, to establish comprehensive policies to combat illicit drug cultivation, manufacturing, and trafficking (particularly with respect to providing economic opportunities that offer viable alternatives to illicit crops) and to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations;

(B) committed, in writing, to implement significant budgetary and personnel reforms of the Colombian Armed Forces; and

(C) committed, in writing, to support substantial additional Colombian financial and other resources to implement such policies and reforms, particularly to meet the country's previous commitments under ''Plan Colombia''; and

(2) no United States Armed Forces personnel or United States civilian contractor employed by the United States will participate in any combat operation in connection with assistance made available under this Act or any other Act.

(c) REPORT.—The authority provided in subsection (a) shall cease to be effective if the Secretary of State has credible evidence that the Colombian Armed Forces are not conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations.

(d) PROVISIONS OF LAW THAT REMAIN APPLICABLE.—Sections 556, 567, and 568 of Public Law 107–115, section 8093 of the Department of Defense Appropriations Act, 2002, and the numerical limitations on the number of United States military personnel and United States individual civilian contractors in section 3204(b)(1) of Public Law 106–246, as amended, shall be applicable to funds made available pursuant to the authority contained in subsection (a) and to funds made available elsewhere in this Act that are made available for assistance for the Colombian Armed Forces and the Colombian National Police.

(RESCISSION)

SEC. 604. (a) Of the funds appropriated under the heading ''Export-Import Bank of the United States'' that are available for tied-aid grants in title I of Public Law 107–115 and under such heading in prior Acts making appropriations for foreign operations, export financing, and related programs, $50,000,000 are rescinded.

(b) Of the funds appropriated under the heading ''Economic Support Fund'' in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (as contained in Public Law 106–113) and in prior Acts making appropriations for foreign operations, export financing, and related programs, $25,000,000 are rescinded.

SEC. 605. Of the amounts appropriated to the President for the United States Agency for International Development (USAID) for the fiscal year 2002 and made available for the Ocean Freight Reimbursement Program of USAID, $300,000 shall be made available to the National

Forum Foundation to implement the TRANSFORM Program to obtain available space on commercial ships for the shipment of humanitarian assistance to needy foreign countries.

SEC. 606. Not later than 45 days after the date of the enactment of this Act, the President shall transmit to the Committee on Appropriations and the Committee on International Relations of the House of Representatives and the Committee on Appropriations and the Committee on Foreign Relations of the Senate a report setting forth a strategy for meeting the immediate and long-term security needs of Afghanistan in order to promote safe and effective delivery of humanitarian and other assistance throughout Afghanistan, further the rule of law and civil order, and support the formation of a functioning, representative Afghan national government.

CHAPTER 7

DEPARTMENT OF THE INTERIOR

UNITED STATES FISH AND WILDLIFE SERVICE

RESOURCE MANAGEMENT

For an additional amount for ''Resource Management'', $412,000, to remain available until expended, to reimburse homeland security-related costs: Provided, That the Congress designates the entire amount as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

CONSTRUCTION

For an additional amount for ''Construction'', $3,125,000, to remain available until expended, for facility and safety improvements related to homeland security: Provided, That the Congress designates the entire amount as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

NATIONAL PARK SERVICE

CONSTRUCTION

For an additional amount for ''Construction'', $17,651,000, to remain available until expended: Provided, That the Congress designates the entire amount as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

UNITED STATES GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

For an additional amount for ''Surveys, Investigations, and Research'', $26,776,000, to remain available until expended, of which $20,000,000 is for high resolution mapping and imagery of the Nation's strategic cities, and of which $6,776,000 is for data storage infrastructure upgrades and emergency power supply system improvements at the Earth Resources Observation Systems Data Center: Provided, That the Congress designates the entire amount as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

BUREAU OF INDIAN AFFAIRS

OPERATION OF INDIAN PROGRAMS

(RESCISSION)

Of the funds provided under this heading in Public Law 107–20 for electric power operations and related activities at the San Carlos Irrigation Project, $10,000,000 are rescinded.

DEPARTMENTAL OFFICES

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For an additional amount for ''Departmental Management, Salaries and Expenses'', for security enhancements, $7,030,000, to remain available until expended, of which not to exceed $4,130,000 may be transferred by the Secretary to any office within the Department of the Interior other than the Bureau of Reclamation: Provided, That the Congress designates the entire amount as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

RELATED AGENCY

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

CAPITAL IMPROVEMENT AND MAINTENANCE

For an additional amount for ''Capital Improvement and Maintenance'', $3,500,000, to remain available until expended, for facility enhancements to protect property from acts of terrorism, vandalism, and theft: Provided, That the Congress designates the entire amount as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

OTHER RELATED AGENCY

SMITHSONIAN INSTITUTION

CONSTRUCTION

For an additional amount for ''Construction'', $2,000,000, to remain available until expended, for planning, design, and construction of an alcohol collections storage facility at the Museum Support Center: Provided, That the Congress designates the entire amount as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

GENERAL PROVISIONS, THIS CHAPTER

SEC. 701. The Department of the Interior and Related Agencies Appropriations Act, 2002 (Public Law 107–63), under the head ''Minerals Management Service, Royalty and Offshore Minerals Management'' is amended by striking the word ''and'' immediately following the word ''points,'' in the sixth proviso, and by inserting immediately after the word ''program'' in the sixth proviso '', or under its authority to transfer oil to the Strategic Petroleum Reserve'', and by inserting at the end of the sixth proviso immediately preceding the colon, the following, ''and to recover MMS transportation costs, salaries and other administrative costs directly related to filling the Strategic Petroleum Reserve''.

SEC. 702. In entering into agreements with foreign countries pursuant to the Wildfire Suppression Assistance Act (42 U.S.C. 1856m) the Secretary of Agriculture and the Secretary of the Interior are authorized to enter into reciprocal agreements in which the individuals furnished under said agreements to provide wildfire services are considered, for purposes of tort liability, employees of the country receiving said services when the individuals are fighting fires. The Secretary of Agriculture or the Secretary of the Interior shall not enter into any agreement under this provision unless the foreign country (either directly or through its fire organization) agrees to assume any and all liability for the acts or omissions of American firefighters engaged in firefighting in a foreign country. When an agreement is reached for furnishing fire fighting services, the only remedies for acts or omissions committed while fighting fires shall be those provided under the laws of the host country and those remedies shall be the exclusive remedies for any claim arising out of fighting fires in a foreign country. Neither the firefighter, the sending country nor any organization associated with the firefighter shall be subject to any action whatsoever pertaining to or arising out of fighting fires: Provided, That the Secretary of Agriculture shall draft and submit to Congress legislation implementing the agreement recently reached between the interested parties, including the Department of Justice and the Department of Agriculture, regarding management of the Black Hills National Forest which shall include actions for protection of resources and communities from fire.

CHAPTER 8

DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

TRAINING AND EMPLOYMENT SERVICES

For an additional amount for ''Training and Employment Services'', $400,000,000, of which $200,000,000 is available for obligation through June 30, 2004 for carrying out sections 171(d) and 173 of the Workforce Investment Act, except that not more than $20,000,000 may be used for carrying out section 171(d); of which $80,000,000 is available for obligation through June 30, 2003 for carrying out section 132(a)(2)(B) of such Act; of which $10,000,000 is available for obligation through June 30, 2004, and shall be transferred to ''Economic Development Assistance Programs'', Economic Development Administration, Department of Commerce, for economic development assistance authorized by the Public Works and Economic Development Act of 1965, as amended, including $8,300,000 for ''Public Works'' investments and $1,700,000 for ''Planning'' investments; and of which $110,000,000 is available for obligation July 1, 2001 through June 30, 2002 for carrying out section 132(a)(2)(B) of the Workforce Investment Act notwithstanding sections 132(b)(2)(B) and 133(b)(2)(B) of such Act and shall be allotted and allocated in a manner that restores to the affected States and local workforce investment areas the $110,000,000 that was subject to rescission under Public Law 107–20: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That notwithstanding any other provision of law, the Governor of the State may include information on local area unexpended balances in determining allocation of the funding to local areas made available through June 30, 2003, under this head, for carrying out section 132(a)(2)(B) of the Workforce Investment Act.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

Of the funds provided under this heading in Public Law 107–116 for Occupational Safety and Health Administration training grants, $1,000,000 shall be used to restore reductions in Institutional Competency Building training grants which commenced in September 2000, for program activities ending September 30, 2002 and $4,275,000 shall be used to extend funding for these same Institutional Competency Building training grants for program activities for the period of September 30, 2002 to September 30, 2003, and $5,900,000 shall be used to extend funding for targeted training grants which commenced in September 2001 for program activities for the period of September 30, 2002 to September 30, 2003, provided that a grantee has demonstrated satisfactory performance.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

HEALTH RESOURCES AND SERVICES

The matter preceding the first proviso under this heading in Public Law 107–116 is amended—

(1) by inserting ''IV,'' after ''titles II, III,''; and

(2) by striking ''$311,978,000'' and inserting ''$315,333,000''.

CENTERS FOR DISEASE CONTROL AND PREVENTION

DISEASE CONTROL, RESEARCH, AND TRAINING

For emergency expenses necessary to support activities related to countering potential biological, disease, and chemical threats to civilian populations and for carrying out title III of the Public Health Service Act, $315,000,000, to be available until expended. Of this amount, $37,000,000 shall be for improving security, including information technology security, and $278,000,000 shall be for equipment and construction and renovation of facilities in Atlanta:

Provided, That notwithstanding any other provision of law, a single contract or related contracts for development and construction of facilities may be employed which collectively include the full scope of the project: Provided further, That the solicitation and contract shall contain the clause ''availability of funds'' found at 48 CFS 52.232–18: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

NATIONAL INSTITUTES OF HEALTH

BUILDINGS AND FACILITIES

(INCLUDING RESCISSION)

Of the funds provided under this heading in Public Law 107–116, $30,000,000 are rescinded.

For emergency expenses necessary to support activities related to countering potential biological, disease, and chemical threats to civilian populations, and for the study of, construction of, renovation of, and acquisition of equipment for, facilities of or used by the National Institutes of Health, including the acquisition of real property, $72,000,000 to remain available until expended: Provided, That notwithstanding any other provision of law, a single contract or related contracts for the development and construction of facilities may be employed which collectively include the full scope of the project: Provided further, That the solicitation and contract shall contain the clause ''availability of funds'' found at 48 CFS 52.232–18: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

CENTERS FOR MEDICARE AND MEDICAID SERVICES

PROGRAM MANAGEMENT

That of the funds made available under this heading in Public Law 107–116, $1,000,000 shall be awarded to the Johns Hopkins School of Medicine for activities associated with an in-home study of self-administered high frequency chest oscillation therapy for patients with chronic obstructive pulmonary disease.

OFFICE OF THE SECRETARY

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

For emergency expenses to respond to the September 11, 2001, terrorist attacks on the United States for ''Public Health and Social Services Emergency Fund'' for baseline and follow-up screening, long-term health monitoring and analysis for the emergency services personnel and rescue and recovery personnel, $90,000,000, to remain available until expended, of which no less than $25,000,000 shall be available for current and retired firefighters: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

DEPARTMENT OF EDUCATION

SCHOOL IMPROVEMENT PROGRAMS

The matter under this heading in Public Law 107–116 is amended by inserting before the period, '': Provided further, That of the amount made available under subpart 8, part D, title V of the ESEA, $2,300,000 shall be available for Digital Educational Programming Grants''.

Of the funds provided under this heading in Public Law 107–116 to carry out the Elementary and Secondary Education Act of 1965, $832,889,000 shall be available to carry out part D of title V, and up to $11,500,000 may be used to carry out section 2345.

In the statement of the managers of the committee of conference accompanying H.R. 3061 (Public Law 107–116; House Report 107–342), in the matter relating to the Fund for the Improvement of Education under the heading ''School Improvement Programs''—

(1) the provision specifying $200,000 for Fresno At-Risk Youth Services and the provision specifying $225,000 for the Fresno Unified School District shall be applied by substituting the following for the two provisions: ''Fresno Unified School District, Fresno, California, in partnership with the City of Fresno, California, for activities to address the problems of at-risk youth, including afterschool activities and a mobile science unit, $425,000'';

(2) the provision specifying $50,000 for the Lewiston-Auburn College/University of Southern Maine shall be deemed to read as follows: ''Lewiston-Auburn College/University of Southern Maine TEAMS program to prepare teachers to meet the demands of Maine's 21st century elementary and middle schools, $50,000'';

(3) the provision specifying $250,000 for the Wellington Public School District, Wellington, KS, shall be deemed to read as follows: ''Wellington Public School District, Wellington, KS, for after school activities, $250,000'';

(4) the provision specifying $200,000 for the Vermont Higher Education Council shall be deemed to read as follows: ''Vermont Higher Education Consortium to develop universal early learning programs to ensure that at least one certified teacher will be available in center-based child care programs, $200,000'';

(5) the provision specifying $250,000 for Education Service District 117 in Wenatchee, WA, shall be deemed to read as follows: ''Education Service District 171 in Wenatchee, WA, to equip a community technology center to expand technology-based training, $250,000'';

(6) the provision specifying $1,000,000 for the Electronic Data Systems Project shall be deemed to read as follows: ''Washington State Department of Education for an electronic data systems project to create a database that would improve the acquisition, analysis and sharing of student information, $1,000,000'';

(7) the provision specifying $250,000 for the YMCA of Seattle-King-Snohomish County shall be deemed to read as follows: ''YWCA of Seattle-King County-Snohomish County to support women and families through an at-risk youth center and other family supports, $250,000'';

(8) the provision specifying $50,000 for Drug Free Pennsylvania shall be deemed to read as follows: ''Drug Free Pennsylvania to implement a demonstration project, $50,000'';

(9) the provision specifying $20,000,000 for the Commonwealth of Pennsylvania Department of Education shall be deemed to read as follows: ''$20,000,000 is included for a grant to the Commonwealth of Pennsylvania Department of Education to provide assistance, through subgrants, to low-performing school districts that are slated for potential takeover and/or on the Education Empowerment List as prescribed by Pennsylvania State Law. The initiative is intended to improve the management and operations of the school districts; assist with curriculum development; provide after-school, summer and weekend programs; offer teacher and principal professional development and promote the acquisition and effective use of instructional technology and equipment'';

(10) the provision specifying $150,000 for the American Theater Arts for Youth, Inc., Philadelphia, PA, for a Mississippi Arts in Education Program shall be deemed to read as follows: ''American Theater Arts for Youth, Inc., for a Mississippi Arts in Education program, $150,000'';

(11) the provision specifying $340,000 for the Zero to Five Foundation, Los Angeles, California, shall be deemed to read as follows: ''Zero to Five Foundation, Los Angeles, California, to develop an early childhood education and parenting project, $340,000'';

(12) the provision specifying $900,000 for the University of Nebraska, Kearney, Nebraska, shall be deemed to read as follows: ''University of Nebraska, Kearney, Nebraska, for a Minority Access to Higher Education Program to address the special needs of Hispanic and other minority populations from grades K–12, $900,000'';

(13) the provision specifying $25,000 for the American Theater Arts for Youth for an Arts in Education program shall be deemed to read as follows: ''American Theater Arts for Youth, Inc., in Philadelphia, Pennsylvania, for an Arts in Education program, $25,000''; and

(14) the provision specifying $50,000 for the Lewiston-Auburn College/University of Southern Maine shall be deemed to read as follows: ''Lewiston-Auburn College/University of Southern Maine CLASS program to prepare teachers to meet the demands of Maine's 21st century elementary and middle schools, $50,000''.

STUDENT FINANCIAL ASSISTANCE

For an additional amount for ''Student Financial Assistance'' for carrying out subpart 1 of part A of title IV of the Higher Education Act of 1965, as amended, $1,000,000,000, to remain available through September 30, 2003: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

HIGHER EDUCATION

In the statement of the managers of the committee of conference accompanying H.R. 3061 (Public Law 107–116; House Report 107–342), in the matter relating to the Fund for the Improvement of Postsecondary Education under the heading ''Higher Education''—

(1) the provision for Nicholls State University, Thibodaux, LA, shall be applied by substituting ''Intergenerational'' for ''International'';

(2) the provision specifying $1,000,000 for the George J. Mitchell Scholarship Research Institute shall be deemed to read as follows: ''George J. Mitchell Scholarship Research Institute in Portland, Maine, for an endowment to provide scholarships that allow students attending public schools in Maine to continue their education, $1,000,000'';

(3) the provision specifying $10,000,000 for the Shriver Peace Worker Program, Inc. shall be deemed to read as follows: ''Shriver Peace Worker Program, Inc. to establish the Sargent Shriver Peace Center, which may include establishing an endowment for such center, for the purpose of supporting graduate research fellowships, professorships, and grants and scholarships for students related to peace studies and social change, $10,000,000''; and

(4) the provision specifying $1,000,000 for Cleveland State University shall be deemed to read as follows: ''Cleveland State University, College of Education, Cleveland, Ohio, for a K–16 Urban School Leadership initiative, $1,000,000''.

EDUCATION RESEARCH, STATISTICS, AND ASSESSMENT

The matter under this heading in Public Law 107–116, is amended by inserting before the period the following new proviso: '': Provided further, That $5,000,000 shall be available to extend for one additional year the contract for the Eisenhower National Clearinghouse for Mathematics and Science Education authorized under section 2102(a)(2) of the Elementary and Secondary Education Act of 1965, prior to its amendment by the No Child Left Behind Act of 2001, Public Law 107–110''.

GENERAL PROVISIONS, THIS CHAPTER

SEC. 801. The Elementary and Secondary Education Act of 1965 is hereby amended in section 8003 by amending subsection (b)(2)(D)(ii)(III) to read as follows: ''For a local educational agency that does not qualify under (B)(i)(II)(aa) of this subsection and has an enrollment of more than 100 but not more than 1,000 children described in subsection (a)(1), the Secretary shall calculate the total number of weighted student units for purposes of subsection (a)(2) by multiplying the number of such children by a factor of 1.25.''.

SEC. 802. The Elementary and Secondary Education Act of 1965 is hereby amended in section 8003(b)(1) by adding the following as subparagraph (G):

''(G) Beginning with fiscal year 2002, for the purpose of calculating a payment under this

paragraph for a local educational agency whose local contribution rate was computed under subparagraph (C)(iii) for the previous year, the Secretary shall use a local contribution rate that is not less than 95 percent of the rate that the LEA received for the preceding year.''.

SEC. 803. Amounts made available in Public Law 107–116 for the administrative and related expenses for departmental management for the Department of Labor, the Department of Health and Human Services, and the Department of Education, shall be reduced on a pro rata basis by $45,000,000: Provided, That this provision shall not apply to the Food and Drug Administration and the Indian Health Service: Provided further, That not later than 15 days after the enactment of this Act, the Director of the Office of Management and Budget shall report to the House and Senate Committees on Appropriations the accounts subject to the pro rata reductions and the amount to be reduced in each account.

SEC. 804. The Higher Education Amendments of 1998 are hereby amended in section 821 as follows:

(1) in subsection (b), by striking ''25'' and inserting ''35'';

(2) in subsection (e)(3), by striking ''$1,500'' and inserting ''$2,000''; and

(3) in subsection (f) by striking ''25'' and inserting ''35''.

SEC. 805. (a) Section 487 of the Public Health Service Act (42 U.S.C. 288) is amended by striking ''National Research Service Awards'' or ''National Research Service Award'' each place either appears and inserting in lieu thereof ''Ruth L. Kirschstein National Research Service Awards'' or ''Ruth L. Kirschstein National Research Service Award'' as appropriate.

(b) The heading for Section 487 of the Public Health Service Act (42 U.S.C. 288) is amended to read as follows: ''Ruth L. Kirschstein National Research Service Awards''.

(c) Any reference in any law (other than this Act), regulation, document, record, map, or other paper of the United States to ''National Research Service Awards'' shall be considered to be a reference to ''Ruth L. Kirschstein National Research Service Awards''.

SEC. 806. None of the funds provided by this or any other Act may be used to enforce the amendments made by section 166 of the Community Renewal Tax Relief Act of 2000 on the State of Alaska, including the imposition of any penalties.

SEC. 807. LOCAL EDUCATIONAL AGENCY SERVING NEW YORK CITY. Notwithstanding section 1124(c)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)(2)), for fiscal year 2002, if the local educational agency serving New York City receives an allocation under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) in an amount that is greater than the amount received by the agency under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for fiscal year 2001, then—

(1) the agency shall distribute any funds in excess of the amount of the fiscal year 2001 allocation on an equal per-pupil basis consistent with section 1113(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6313(c)); and

(2) each county in New York City shall receive an amount from the agency that is not less than the amount the county received in fiscal year 2001.

SEC. 808. In the statement of the managers of the committee of conference accompanying the fiscal year 2001 Labor, Health and Human Services, and Education appropriations bill (Public Law 106–554; House Report 106–1033), the provision specifying $464,000 for the Bethel Native Corporation worker demonstration project shall be deemed to read as follows: ''for the Alaska CHAR vocational training program, $100,000 and $364,000 for the Yuut Elitnauvriat People's Learning Center in Bethel, Alaska for vocational training for Alaska Natives.

CHAPTER 9

LEGISLATIVE BRANCH

JOINT ITEMS

CAPITOL POLICE BOARD

CAPITOL POLICE

GENERAL EXPENSES

For an additional amount for the Capitol Police Board for necessary expenses of the Capitol Police, including security equipment and installation, supplies, materials and contract services, $3,600,000, to be disbursed by the Capitol Police Board or their designee: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

LIBRARY OF CONGRESS

COPYRIGHT OFFICE

SALARIES AND EXPENSES

For an additional amount for ''Copyright Office, Salaries and expenses'', $7,500,000, to remain available until expended: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

GENERAL PROVISIONS, THIS CHAPTER

SEC. 901. The amount otherwise made available under section 506 of the Supplemental Appropriations Act, 1973 (2 U.S.C. 58) for fiscal year 2002 to any Senator from the Senators' Official Personnel and Office Expense Account shall be increased by the amount (not in excess of $20,000) which the Senator certifies in a written request to the Secretary of the Senate made not later than September 30, 2002, as being necessary for the payment or reimbursement of expenditures incurred or obligated during fiscal year 2002 that—

(1) are otherwise payable from such account, and

(2) are directly related to responses to the terrorist attacks of September 11, 2001, or the discovery of anthrax in the Senate complex and the displacement of Senate offices due to such discovery.

SEC. 902. (a) Chapter 9 of the Emergency Supplemental Act, 2002 (Public Law 107–117; 115 Stat. 2315), is amended—

(1) in section 901 (a), by striking ''buildings and facilities'' and insert ''buildings and facilities, subject to the availability of appropriations,''.

(b) Section 9 of the Act of July 31, 1946 (40 U.S.C. 212a), is amended by redesignating the subsection (b) added by section 903(c)(2) of the Emergency Supplemental Act, 2002, as subsection (c).

(c) The amendment made by this section shall take effect as if included in the enactment of the Emergency Supplemental Act, 2002.

SEC. 903. (a) Section 909(a) of chapter 9 of the Emergency Supplemental Act, 2002 (40 U.S.C. 207b–2; Public Law 107–117; 115 Stat. 2320) (in this section referred to as the ''Act'') is amended—

(1) in paragraph (1), by striking ''determines that the Capitol Police would be likely, in the absence of such a bonus, to encounter difficulty in filling the position'' and inserting '', in the sole discretion of the Board, determines that such a bonus will assist the Capitol Police in recruitment efforts''; and

(2) by adding at the end the following:

''(6) DETERMINATIONS NOT APPEALABLE OR REVIEWABLE.—Any determination of the Board under this subsection shall not be appealable or reviewable in any manner.''.

(b) Section 909(b) of the Act is amended—

(1) in paragraph (1)—

(A) by striking subparagraphs (A) and (B); and

(B) by striking ''if—'' and inserting ''if the Board, in the sole discretion of the Board, determines that such a bonus will assist the Capitol Police in retention efforts.''; and

(2) in paragraph (3), by striking ''the reduction or the elimination of a retention allowance may not be appealed'' and inserting ''any determination of the Board under this subsection, or the reduction or elimination of a retention allowance, shall not be appealable or reviewable in any manner''.

(c) Section 909 of the Act is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by inserting after subsection (e) the following:

''(f) TUITION ALLOWANCES.—The Capitol Police Board may authorize the Chief to pay tuition allowances for payment or reimbursement of education expenses in the same manner and to the same extent as retention allowances under subsection (b).''.

SEC. 904. (a) The Architect of the Capitol is authorized, subject to the availability of appropriations, to acquire (through purchase, lease, or otherwise) buildings and facilities for use as computer backup facilities (and related uses) for offices in the legislative branch.

(b) The acquisition of a building or facility under subsection (a) shall be subject to the approval of—

(1) the House Office Building Commission, in the case of a building or facility acquired for the use of an office of the House of Representatives;

(2) the Committee on Rules and Administration of the Senate, in the case of a building or facility acquired for the use of an office of the Senate; or

(3) the House Office Building Commission and the Committee on Rules and Administration of the Senate, in the case of a building or facility acquired for the use of any other office in the legislative branch.

(c) Any building or facility acquired by the Architect of the Capitol pursuant to subsection (a) shall be a part of the United States Capitol Grounds and shall be subject to the provisions of the Act entitled ''An Act to define the area of the United States Capitol Grounds, to regulate the use thereof, and for other purposes'', approved July 31, 1946.

(d) This section shall apply with respect to fiscal year 2002 and each succeeding fiscal year.

CHAPTER 10

DEPARTMENT OF TRANSPORTATION

TRANSPORTATION SECURITY ADMINISTRATION

For additional amounts for emergency expenses to ensure transportation security, $4,702,525,000, to remain available until expended: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That of the amounts provided under this head, $200,000,000 shall be for port security grants under the same terms and conditions as provided for under Public Law 107–117; $20,000,000 shall be used to enable the Under Secretary for Transportation Security to make grants and enter into contracts to enhance security for intercity bus operations; and $27,945,000 shall be used to enable said Under Secretary to make grants, enter into contracts and execute interagency agreements for the purpose of deploying Operation Safe Commerce.

U.S. COAST GUARD

OPERATING EXPENSES

For an additional amount for ''Operating Expenses'' for emergency expenses for homeland security, $318,400,000, to remain available until September 30, 2003: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for ''Acquisition, Construction, and Improvements'' for emergency

expenses for homeland security, $347,700,000, to remain available until September 30, 2004: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

FEDERAL AVIATION ADMINISTRATION

OPERATIONS

For an additional amount for ''Operations'', $100,000,000, for security activities at Federal Aviation Administration facilities: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

FACILITIES AND EQUIPMENT

(AIRPORT AND AIRWAY TRUST FUND)

For an additional amount for ''Facilities and Equipment'', $15,000,000, to be derived from the Airport and Airway Trust Fund and to remain available until expended: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

GRANTS-IN-AID FOR AIRPORTS

(AIRPORT AND AIRWAY TRUST FUND)

For an additional amount to enable the Federal Aviation Administrator to compensate airports for the direct costs associated with new, additional or revised security requirements imposed on airport operators by the Administrator on or after September 11, 2001, notwithstanding any other provision of law, $100,000,000, to be derived from the Airport and Airway Trust Fund and to remain available until expended: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

FEDERAL HIGHWAY ADMINISTRATION

FEDERAL-AID HIGHWAYS

EMERGENCY RELIEF PROGRAM

(HIGHWAY TRUST FUND)

For an additional amount for ''Emergency Relief Program'', as authorized by 23 U.S.C. 125, for emergency expenses to respond to the September 11, 2001, terrorist attacks on New York City, $167,000,000 for the State of New York, to be derived from the Highway Trust Fund and to remain available until expended: Provided, That notwithstanding 23 U.S.C. 120(e), the Federal share for any project on a Federal-aid highway related to the New York City terrorist attacks shall be 100 percent: Provided further, That notwithstanding 23 U.S.C. 125(d)(1), the Secretary of Transportation may obligate more than $100,000,000 for those projects: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

FEDERAL-AID HIGHWAYS

(HIGHWAY TRUST FUND)

(RESCISSION)

Of the funds apportioned to each state under the programs authorized under sections 1101(a)(1), 1101(a)(2), 1101(a)(3), 1101(a)(4) and 1101(a)(5) of Public Law 105–178, as amended, $320,000,000 are rescinded.

FEDERAL-AID HIGHWAYS

EMERGENCY RELIEF PROGRAM

(HIGHWAY TRUST FUND)

For an additional amount for the ''EMERGENCY RELIEF PROGRAM'', as authorized by section 125 of title 23, United States Code, $120,000,000, to be derived from the Highway Trust Fund and to remain available until expended: Provided, That the amount made available under this paragraph shall be used solely for eligible but uncompensated applications pending as of May 28, 2002, including $13,411,000 for projects in the State of Washington stemming from the Nisqually earthquake and other disasters, and up to $12,000,000 for emergency expenses to respond to the May 26, 2002 Interstate 40 bridge collapse over the Arkansas River in Oklahoma.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

BORDER ENFORCEMENT PROGRAM

For necessary expenses of the Border Enforcement Program to respond to the September 11, 2001, terrorist attacks on the United States, $19,300,000, to be derived from the Highway Trust Fund, of which $4,200,000 shall be to implement section 1012 of Public Law 107–56 (USA Patriot Act); $10,000,000 shall be for drivers' license fraud detection and prevention, northern border safety and security study, and hazardous material security education and outreach; and $5,100,000 shall be for the purposes of coordinating drivers' license registration and social security number verification: Provided, That in connection with such commercial drivers' license fraud deterrence projects, the Secretary may enter into such contracts or grants with the American Association of Motor Vehicle Administrators, States, or other persons as the Secretary may so designate to carry out these purposes: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

FEDERAL RAILROAD ADMINISTRATION

GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

For an additional amount for the National Railroad Passenger Corporation for emergency expenses to ensure the safety of rail passenger operations, $55,000,000, to remain available until expended, of which $20,000,000 shall be used to repair damaged passenger equipment, $12,000,000 shall be used for emergency security needs, and $23,000,000 shall be used for the heavy overhaul of the rail passenger fleet.

FEDERAL TRANSIT ADMINISTRATION

CAPITAL INVESTMENT GRANTS

For an additional amount for ''Capital Investment Grants'' for emergency expenses to respond to the September 11, 2001, terrorist attacks in New York City, $1,800,000,000, to remain available until expended, to replace, rebuild, or enhance the public transportation systems serving the Borough of Manhattan, New York City, New York: Provided, That the Secretary may use up to one percent of this amount for oversight activities: Provided further, That these funds are subject to grant requirements as determined by the Secretary to ensure that eligible projects will improve substantially the mobility of commuters in Lower Manhattan: Provided further, That the Federal share for any project funded from this amount shall be 100 percent: Provided further, That these funds are in addition to any other appropriation available for these purposes: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

RESEARCH AND SPECIAL PROGRAMS

For an additional amount for ''Research and Special Programs'' to establish a Transportation Information Operations Center for improving transportation emergency response coordination, $3,500,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

GENERAL PROVISIONS, THIS CHAPTER

SEC. 1001. Section 1106 of Public Law 107–117 is amended by deleting ''$116,023,000'' and inserting ''$128,123,000''.

SEC. 1002. Section 1102 of Public Law 105–178 is amended by adding at the end the following:

''(k) Notwithstanding any other provision of law, the obligations for Federal-aid highway and highway safety construction programs for fiscal year 2003 shall be not less than $27,746,000,000 and not more than $28,900,000,000.''.

SEC. 1003. Title II of Division C of Public Law 105–277 is amended by striking ''of more than 750 gross registered tons'' in each place it appears, and inserting in lieu thereof, ''of more than 750 gross registered tons (as measured under Chapter 145 of Title 46) or 1,900 gross registered tons as measured under Chapter 143 of that Title)''.

SEC. 1004. Section 335 of Public Law 107–87 is amended by inserting ''and the Transportation Security Administration'' after ''the Federal Aviation Administration''; by inserting '', aviation security'' after ''air navigation'', and by inserting ''and the TSA for necessary security checkpoints'' after the word ''facilities''.

SEC. 1005. Section 354 of Public Law 106–346 (114 Stat. 1356A–35) is amended by inserting ''or Nail Road'' after ''Star Landing Road''.

SEC. 1006. Notwithstanding any other provision of law, $2,750,000 of amounts made available for ''Intelligent Transportation Systems'' in Public Law 107–87 and Public Law 106–346 shall be made available for activities authorized under section 5118 of Public Law 105–178.

SEC. 1007. Not later than 30 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall submit to Congress a report—

(A) explaining how the Administrator will address the air traffic controller staffing shortage at Newark International Airport; and

(B) providing a deadline by which the airport will have an adequate number of air traffic controllers.

SEC. 1008. The $300,000 made available to the State of Idaho under the matter under the heading ''JOB ACCESS AND REVERSE COMMUTE GRANTS'' under the heading ''FEDERAL TRANSIT ADMINISTRATION'' in title I of the Department of Transportation and Related Agencies Appropriations Act, 2002 (Public Law 107–87; 115 Stat. 852), shall be deemed to have been made available to the State of Idaho to carry out a job training and supportive services program under section 140(b) of title 23, United States Code.

CHAPTER 11

DEPARTMENT OF THE TREASURY

FINANCIAL MANAGEMENT SERVICE

SALARIES AND EXPENSES

(RESCISSION)

Of the available balances under this heading, $14,000,000 are rescinded.

UNITED STATES CUSTOMS SERVICE

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $59,000,000, to remain available until expended: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That $10,000,000 is authorized for reimbursing State and local law enforcement agencies that have provided necessary Federal assistance to personnel of the United States Customs Service, along the Northern Border of the United States.

INTERNAL REVENUE SERVICE

INFORMATION SYSTEMS

(RESCISSION)

Of the available balances under this heading, $10,000,000 are rescinded.

UNITED STATES SECRET SERVICE

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $17,200,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

POSTAL SERVICE

PAYMENT TO THE POSTAL SERVICE FUND

For an additional amount for ''Payment to the Postal Service Fund'' for emergency expenses to enable the Postal Service to protect postal employees and postal customers from exposure to biohazardous material and to sanitize and screen the mail, $87,000,000, to remain available until expended: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $5,000,000, to remain available until expended: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That none of these funds may be obligated until the Senate confirms a Director for Homeland Security in the Office of Homeland Security pursuant to section 1102 of this Act.

INDEPENDENT AGENCIES

GENERAL SERVICES ADMINISTRATION

REAL PROPERTY ACTIVITIES

FEDERAL BUILDINGS FUND

For an additional amount for ''Federal Buildings Fund'' for building security emergency expenses resulting from the September 11, 2001, terrorist attacks on the United States, $51,800,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

POLICY AND OPERATIONS

For an additional amount for ''Policy and Operations'' for emergency expenses related to vulnerabilities in internet data transmission capability, $2,500,000, to remain available until September 30, 2003: Provided, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

GENERAL PROVISIONS, THIS CHAPTER

SEC. 1101. For purposes of section 201(a) of the Federal Property and Administrative Services Act of 1949 (relating to Federal sources of supply, including lodging providers, airlines and other transportation providers), the Eisenhower Exchange Fellowship Program shall be deemed an executive agency for the purposes of carrying out the provisions of 20 U.S.C. 5201, and the employees of and participants in the Eisenhower Exchange Fellowship Program shall be eligible to have access to such sources of supply on the same basis as employees of an executive agency have such access.

SEC. 1102. DIRECTOR FOR HOMELAND SECURITY. (a) IN GENERAL.—There is established the position of Director for Homeland Security in the Office of Homeland Security established under section 1 of Executive order No. 13228. The Director for Homeland Security shall be the head of that Office, after appointment by the President, by and with the advice and consent of the Senate.

(b) EFFECTIVE DATE.—This section shall take effect 30 days after the date of enactment of this Act.

CHAPTER 12

DEPARTMENT OF VETERANS AFFAIRS

VETERANS BENEFITS ADMINISTRATION

COMPENSATION AND PENSIONS

For an additional amount for ''Compensation and pensions'', $1,100,000,000, to remain available until expended.

VETERANS HEALTH ADMINISTRATION

MEDICAL CARE

For an additional amount for ''Medical care'' resulting from continued open enrollment for Priority Level 7 veterans, $142,000,000.

For an additional amount for ''Medical care'', $275,000,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PUBLIC AND INDIAN HOUSING

HOUSING CERTIFICATE FUND

(RESCISSION)

Of the amounts unobligated or recaptured, prior to September 30, 2002, from funds appropriated under this heading during fiscal year 2002 and prior years, $300,000,000 are rescinded.

COMMUNITY PLANNING AND DEVELOPMENT

COMMUNITY DEVELOPMENT FUND

For an additional amount for ''Community Development Fund'', as authorized by title I of the Housing and Community Development Act of 1974, as amended, for emergency expenses to respond to the September 11, 2001, terrorist attacks on the United States, $750,000,000, to remain available until expended: Provided, That the State of New York, in cooperation with the City of New York, shall, through the Lower Manhattan Development Corporation, distribute these funds: Provided further, That such funds may be used for assistance for properties and businesses (including the restoration of utility infrastructure) damaged by, and for economic revitalization directly related to, the terrorist attacks on the United States that occurred on September 11, 2001, in New York City and for reimbursement to the State and City of New York for expenditures incurred from the regular Community Development Block Grant formula allocation used to achieve these same purposes: Provided further, That the State of New York is authorized to provide such assistance to the City of New York: Provided further, That in administering these funds and funds under section 108 of such Act used for economic revitalization activities in New York City, the Secretary may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds or guarantees (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding that such waiver is required to facilitate the use of such funds or guarantees: Provided further, That such funds shall not adversely affect the amount of any formula assistance received by the State of New York, New York City, or any categorical application for other Federal assistance: Provided further, That the Secretary shall publish in the Federal Register any waiver of any statute or regulation that the Secretary administers pursuant to title I of the Housing and Community Development Act of 1974, as amended, no later than five days before the effective date of such waiver: Provided further, That the Secretary shall notify the Committees on Appropriations on the proposed allocation of any funds and any related waivers pursuant to this section no later than five days before such allocation: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

The referenced statement of the managers under the heading ''Community Development Block Grants'' in title II of Public Law 105–276 is deemed to be amended by striking ''$250,000 for renovation, accessibility, and asbestos remediation for the Wellstone Neighborhood Center, Wellstone, Missouri'' and insert in lieu thereof ''$250,000 for the St. Louis Economic Council for design, infrastructure and construction related to the Enterprise Center-Wellstone in Wellstone, Missouri''.

The referenced statement of the managers under the heading ''Community Development Fund'' in title II of Public Law 106–377 is deemed to be amended by striking ''$1,000,000 for the Community Action Agency of Southern New Mexico, Inc. for construction of a regional food bank and supporting offices'' and insert in lieu thereof ''$1,000,000 for the Community Action Agency of Southern New Mexico for construction, purchase, or renovation and the equipping of a regional food bank and supporting offices''.

The referenced statement of the managers under the heading ''Community Development Fund'' in title II of Public Law 107–73 is deemed to be amended by striking ''$400,000 to the City of Reading, PA for the development of the Morgantown Road Industrial Park on what is currently a brownfields site'' and insert in lieu thereof ''$400,000 for the City of Reading, PA for the development of the American Chain and Cable brownfield site''.

The referenced statement of the managers under the heading ''Community Development Fund'' in title II of Public Law 107–73 is deemed to be amended by striking ''$750,000 for the Smart Start Child Care Center and Expertise School of Las Vegas, Nevada for construction of a child care facility'' and insert in lieu thereof ''$250,000 for the Smart Start Child Care Center and Expertise School of Las Vegas, Nevada for construction of a child care facility and $500,000 for job training''.

HOME INVESTMENT PARTNERSHIPS PROGRAM

(RESCISSION)

Of the funds made available under this heading in Public Law 107–73, $50,000,000 are rescinded from the Downpayment Assistance Initiative.

HOUSING PROGRAMS

RENTAL HOUSING ASSISTANCE

The limitation otherwise applicable to the maximum payments that may be required in any fiscal year by all contracts entered into under section 236 of the National Housing Act (12 U.S.C. 1715z–1) is reduced in fiscal year 2002 by not more than $300,000,000 in uncommitted balances of authorizations of contract authority provided for this purpose in appropriations acts: Provided, That up to $300,000,000 of recaptured section 236 budget authority resulting from the prepayment of mortgages subsidized under section 236 of the National Housing Act (12 U.S.C. 1715z–1) shall be made available as provided in section 236(s) of the National Housing Act.

INDEPENDENT AGENCIES

ENVIRONMENTAL PROTECTION AGENCY

STATE AND TRIBAL ASSISTANCE GRANTS

The referenced statement of the managers under this heading in Public Law 106–377 is deemed to be amended by striking everything after ''$1,000,000'' in reference to item 91 and inserting ''to the Northern Kentucky Area Development District for Carroll County Wastewater Infrastructure Project ($500,000), City of Owenton Water Collection and Treatment System Improvements and Freshwater Intake Project ($400,000), Grant County Williamstown Lake Expansion Study ($50,000), and Pendleton County Williamstown Lake Expansion Study ($50,000)''.

SCIENCE AND TECHNOLOGY

For an additional amount for ''Science and technology'', $100,000,000: Provided, That the

entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

HAZARDOUS SUBSTANCE SUPERFUND

For an additional amount for ''Hazardous substance superfund'' for additional expenses incurred for anthrax investigations and cleanup actions at the United States Capitol and the Congressional office building complex, $12,500,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

FEDERAL EMERGENCY MANAGEMENT AGENCY

DISASTER RELIEF

For an additional amount for ''Disaster relief'' for emergency expenses to respond to the September 11, 2001, terrorist attacks on the United States, $2,660,000,000, to remain available until expended: Provided, That in administering the Mortgage and Rental Assistance Program for victims of September 11, 2001, the Federal Emergency Management Agency will recognize those people who were either directly employed in the Borough of Manhattan or had at least 75 percent of their wages coming from business conducted within the Borough of Manhattan as eligible for assistance under the program, as they were directly impacted by the terrorist attacks: Provided further, That FEMA shall provide compensation to previously denied Mortgage and Rental Assistance Program applicants who would qualify under these new guidelines: Provided further, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

EMERGENCY MANAGEMENT PLANNING AND ASSISTANCE

For an additional amount for ''Emergency management planning and assistance'' for emergency expenses to respond to the September 11, 2001, terrorist attacks on the United States, $745,000,000, of which $175,000,000 is for FEMA to make available to the States for State and local all hazards operational planning including response planning for natural and man-made disasters including terrorism; $300,000,000 for programs as authorized by section 33 of the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. 2201 et seq.); $92,000,000 for the existing national urban search and rescue system; $115,000,000 for interoperable communications equipment; $56,000,000 for grants to state and local governments for emergency operations centers; and $7,000,000 for secure communications equipment and associated facility improvements and maintenance for state emergency operations centers: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

CERRO GRANDE FIRE CLAIMS

For an additional amount for ''Cerro Grande Fire Claims'', $80,000,000 for claims resulting from the Cerro Grande fires: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

NATIONAL SCIENCE FOUNDATION

EDUCATION AND HUMAN RESOURCES

For an additional amount for ''Education and human resources'' for emergency expenses to respond to emergent needs in cyber security, $19,300,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

GENERAL PROVISIONS, THIS CHAPTER

SEC. 1201. The Secretary of Housing and Urban Development shall continue to administer the Disposition of Assets in Revitalization Areas program as provided in section 602 of Public Law 105–276 and the Secretary shall renew all contracts and enter into new contracts with eligible participants in a manner consistent with the requirements of such section.

SEC. 1202. The Secretary of Housing and Urban Development shall submit a report every 90 days to the House and Senate Committees on Appropriations on the status of any multifamily housing project (including all hospitals and nursing homes) insured under the National Housing Act that has been in default for longer than 60 days. The report shall include the location of the property, the reason for the default, and all actions taken by the Secretary and owner with regard to the default, including any work-out agreements, the status and terms of any assistance or loans, and any transfer of an ownership interest in the property (including any assistance or loans made to the prior, current or intended owner of the property or to the local unit of government in which the property is located).

SEC. 1203. For purposes of assessing the use of Stafford Apartments (FHA Project No: 052–44163) as student housing, notwithstanding any other provision of law—

(1) such property shall not be considered an eligible multifamily housing project pursuant to section 512(2) of MAHRAA for a period not to exceed 24 months from the date of enactment of this amendment, and the Secretary shall offer to extend the current Section 8 contract at rent levels as in effect during fiscal year 2001, subject to annual operating cost adjustment factor increases, for a continuous period commencing October 1, 2001 not to exceed 24 months from the date of enactment of this amendment, provided that such contract shall be extended further at such rent levels to accomplish a mortgage restructuring if required after such 24 month period for a period of the earlier of one year or the closing of the restructuring plan as set forth in the regulations promulgated at 24 CFR Part 401 as now in effect;

(2) subject to the concurrence by the Secretary of a relocation plan for current tenants, all of the units in the projects may be available for student housing notwithstanding any federal use restrictions including those required pursuant to Section 201 of the Housing and Community Development Amendments of 1978, as amended, and Section 250 of the National Housing Act, as amended; and

(3) upon the concurrence by the Secretary of such relocation plan, all of the tenants of the project shall be relocated, and any rights of tenants to elect to remain in the project pursuant to the provisions of Section 8(t)(1)(B) of the United States Housing Act of 1937, as amended, shall not apply.

TITLE II—GENERAL PROVISIONS

SEC. 2001. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided in this Act.

SEC. 2002. (a) IN GENERAL.—Any amount appropriated in this Act that is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, shall not be available for obligation unless all such amounts appropriated in this Act are designated by the President, upon enactment of this Act, as emergency requirements pursuant to that section.

(b) EXCEPTION.—Subsection (a) shall not apply to chapter 3 of title I.

SEC. 2003. (a) The Senate finds that—

(1) the Federal Bureau of Investigation is the principle investigative arm of the Department of Justice;

(2) the Federal Bureau of Investigation has the authority and responsibility to investigate specific crimes assigned to it, including violations concerning organized crime and drugs, civil rights, violent crimes, financial crimes, counterterrorism, and foreign counterintelligence; and

(3) the mission of the Federal Bureau of Investigation is—

(A) to uphold the law through the investigation of violations of Federal criminal law;

(B) to protect the United States from foreign intelligence and terrorist activities;

(C) provide leadership and law enforcement assistance to Federal, State, local, and international agencies; and

(D) to perform these responsibilities in a manner that is responsive to the needs of the public and is faithful to the Constitution of the United States.

(b) It is the sense of the Senate that—

(1) the reorganization of the Federal Bureau of Investigation is a positive and important response to challenges posed by the increased threat of terrorism and that continued constructive dialog between FBI Director Robert Mueller and Congress will help make the reorganization a success;

(2) the Federal Bureau of Investigation shall continue to allocate adequate resources for the purpose of investigating all crimes under its jurisdiction;

(3) the reallocation of agents and resources to counterterrorism investigations should not hamper the ability of the Federal Bureau of Investigation to investigate crimes involving drugs; and

(4) sufficient homeland security resources should be made available to State and local law enforcement and public safety officials to enable them to meet their responsibilities as the Nation's first responders.

SEC. 2004. In subsection (e)(4) of the Alaska Native Claims Settlement Act created by section 702 of Public Law 107–117—

(1) paragraph (B) is amended by—

(A) striking ''subsection (e)(2)'' and inserting in lieu thereof ''subsections (e)(1) or (e)(2)''; and

(B) striking ''obligations under section 7 of P.L. 87–305'' and inserting in lieu thereof ''small or small disadvantaged business subcontracting goals under section 502 of P.L. 100–656, provided that where lower tier subcontractors exist, the entity shall designate the appropriate contractor or contractors to receive such credit''; and

(2) paragraph (C) is amended by striking ''subsection (e)(2)'' and inserting ''subsection (e)(1) or (e)(2)''.

TITLE III—AMERICAN SERVICE MEMBERS' PROTECTION ACT

SEC. 3001. SHORT TITLE.

This title may be cited as the ''American Servicemembers' Protection Act of 2002''.

SEC. 3002. FINDINGS.

Congress makes the following findings:

(1) On July 17, 1998, the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, meeting in Rome, Italy, adopted the ''Rome Statute of the International Criminal Court''. The vote on whether to proceed with the statute was 120 in favor to 7 against, with 21 countries abstaining. The United States voted against final adoption of the Rome Statute.

(2) As of April 30, 2001, 139 countries had signed the Rome Statute and 30 had ratified it. Pursuant to Article 126 of the Rome Statute, the statute will enter into force on the first day of the month after the 60th day following the date on which the 60th country deposits an instrument ratifying the statute.

(3) Since adoption of the Rome Statute, a Preparatory Commission for the International Criminal Court has met regularly to draft documents to implement the Rome Statute, including Rules of Procedure and Evidence, Elements of Crimes, and a definition of the Crime of Aggression.

(4) During testimony before the Congress following the adoption of the Rome Statute, the lead United States negotiator, Ambassador

David Scheffer stated that the United States could not sign the Rome Statute because certain critical negotiating objectives of the United States had not been achieved. As a result, he stated: ''We are left with consequences that do not serve the cause of international justice.''

(5) Ambassador Scheffer went on to tell the Congress that: ''Multinational peacekeeping forces operating in a country that has joined the treaty can be exposed to the Court's jurisdiction even if the country of the individual peacekeeper has not joined the treaty. Thus, the treaty purports to establish an arrangement whereby United States armed forces operating overseas could be conceivably prosecuted by the international court even if the United States has not agreed to be bound by the treaty. Not only is this contrary to the most fundamental principles of treaty law, it could inhibit the ability of the United States to use its military to meet alliance obligations and participate in multinational operations, including humanitarian interventions to save civilian lives. Other contributors to peacekeeping operations will be similarly exposed.''.

(6) Notwithstanding these concerns, President Clinton directed that the United States sign the Rome Statute on December 31, 2000. In a statement issued that day, he stated that in view of the unremedied deficiencies of the Rome Statute, ''I will not, and do not recommend that my successor submit the Treaty to the Senate for advice and consent until our fundamental concerns are satisfied''.

(7) Any American prosecuted by the International Criminal Court will, under the Rome Statute, be denied procedural protections to which all Americans are entitled under the Bill of Rights to the United States Constitution, such as the right to trial by jury.

(8) Members of the Armed Forces of the United States should be free from the risk of prosecution by the International Criminal Court, especially when they are stationed or deployed around the world to protect the vital national interests of the United States. The United States Government has an obligation to protect the members of its Armed Forces, to the maximum extent possible, against criminal prosecutions carried out by the International Criminal Court.

(9) In addition to exposing members of the Armed Forces of the United States to the risk of international criminal prosecution, the Rome Statute creates a risk that the President and other senior elected and appointed officials of the United States Government may be prosecuted by the International Criminal Court. Particularly if the Preparatory Commission agrees on a definition of the Crime of Aggression over United States objections, senior United States officials may be at risk of criminal prosecution for national security decisions involving such matters as responding to acts of terrorism, preventing the proliferation of weapons of mass destruction, and deterring aggression. No less than members of the Armed Forces of the United States, senior officials of the United States Government should be free from the risk of prosecution by the International Criminal Court, especially with respect to official actions taken by them to protect the national interests of the United States.

(10) Any agreement within the Preparatory Commission on a definition of the Crime of Aggression that usurps the prerogative of the United Nations Security Council under Article 39 of the charter of the United Nations to ''determine the existence of any .... act of aggression'' would contravene the charter of the United Nations and undermine deterrence.

(11) It is a fundamental principle of international law that a treaty is binding upon its parties only and that it does not create obligations for nonparties without their consent to be bound. The United States is not a party to the Rome Statute and will not be bound by any of its terms. The United States will not recognize the jurisdiction of the International Criminal Court over United States nationals.

SEC. 3003. WAIVER AND TERMINATION OF PROHIBITIONS OF THIS TITLE.

(a) AUTHORITY TO INITIALLY WAIVE SECTIONS 3005 AND 3007.—The President is authorized to waive the prohibitions and requirements of sections 3005 and 3007 for a single period of 1 year. A waiver under this subsection may be issued only if the President at least 15 days in advance of exercising such authority—

(1) notifies the appropriate congressional committees of the intention to exercise such authority; and

(2) determines and reports to the appropriate congressional committees that the International Criminal Court has entered into a binding agreement that—

(A) prohibits the International Criminal Court from seeking to exercise jurisdiction over the following persons with respect to actions undertaken by them in an official capacity:

(i) covered United States persons;

(ii) covered allied persons; and

(iii) individuals who were covered United States persons or covered allied persons; and

(B) ensures that no person described in subparagraph (A) will be arrested, detained, prosecuted, or imprisoned by or on behalf of the International Criminal Court.

(b) AUTHORITY TO EXTEND WAIVER OF SECTIONS 3005 AND 3007.—The President is authorized to waive the prohibitions and requirements of sections 3005 and 3007 for successive periods of 1 year each upon the expiration of a previous waiver pursuant to subsection (a) or this subsection. A waiver under this subsection may be issued only if the President at least 15 days in advance of exercising such authority—

(1) notifies the appropriate congressional committees of the intention to exercise such authority; and

(2) determines and reports to the appropriate congressional committees that the International Criminal Court—

(A) remains party to, and has continued to abide by, a binding agreement that—

(i) prohibits the International Criminal Court from seeking to exercise jurisdiction over the following persons with respect to actions undertaken by them in an official capacity:

(I) covered United States persons;

(II) covered allied persons; and

(III) individuals who were covered United States persons or covered allied persons; and

(ii) ensures that no person described in clause (i) will be arrested, detained, prosecuted, or imprisoned by or on behalf of the International Criminal Court; and

(B) has taken no steps to arrest, detain, prosecute, or imprison any person described in clause (i) of subparagraph (A).

(c) AUTHORITY TO WAIVE SECTIONS 3004 AND 3006 WITH RESPECT TO AN INVESTIGATION OR PROSECUTION OF A NAMED INDIVIDUAL.—The President is authorized to waive the prohibitions and requirements of sections 3004 and 3006 to the degree such prohibitions and requirements would prevent United States cooperation with an investigation or prosecution of a named individual by the International Criminal Court. A waiver under this subsection may be issued only if the President at least 15 days in advance of exercising such authority—

(1) notifies the appropriate congressional committees of the intention to exercise such authority; and

(2) determines and reports to the appropriate congressional committees that—

(A) a waiver pursuant to subsection (a) or (b) of the prohibitions and requirements of sections 3005 and 3007 is in effect;

(B) there is reason to believe that the named individual committed the crime or crimes that are the subject of the International Criminal Court's investigation or prosecution;

(C) it is in the national interest of the United States for the International Criminal Court's investigation or prosecution of the named individual to proceed; and

(D) in investigating events related to actions by the named individual, none of the following persons will be investigated, arrested, detained, prosecuted, or imprisoned by or on behalf of the International Criminal Court with respect to actions undertaken by them in an official capacity:

(i) Covered United States persons.

(ii) Covered allied persons.

(iii) Individuals who were covered United States persons or covered allied persons.

(d) TERMINATION OF WAIVER PURSUANT TO SUBSECTION (c).—Any waiver or waivers exercised pursuant to subsection (c) of the prohibitions and requirements of sections 3004 and 3006 shall terminate at any time that a waiver pursuant to subsection (a) or (b) of the prohibitions and requirements of sections 3005 and 3007 expires and is not extended pursuant to subsection (b).

(e) TERMINATION OF PROHIBITIONS OF THIS TITLE.—The prohibitions and requirements of sections 3004, 3005, 3006, and 3007 shall cease to apply, and the authority of section 3008 shall terminate, if the United States becomes a party to the International Criminal Court pursuant to a treaty made under article II, section 2, clause 2 of the Constitution of the United States.

SEC. 3004. PROHIBITION ON COOPERATION WITH THE INTERNATIONAL CRIMINAL COURT.

(a) APPLICATION.—The provisions of this section—

(1) apply only to cooperation with the International Criminal Court and shall not apply to cooperation with an ad hoc international criminal tribunal established by the United Nations Security Council before or after the date of the enactment of this Act to investigate and prosecute war crimes committed in a specific country or during a specific conflict; and

(2) shall not prohibit—

(A) any action permitted under section 3008; or

(B) communication by the United States of its policy with respect to a matter.

(b) PROHIBITION ON RESPONDING TO REQUESTS FOR COOPERATION.—Notwithstanding section 1782 of title 28, United States Code, or any other provision of law, no United States Court, and no agency or entity of any State or local government, including any court, may cooperate with the International Criminal Court in response to a request for cooperation submitted by the International Criminal Court pursuant to the Rome Statute.

(c) PROHIBITION ON TRANSMITTAL OF LETTERS ROGATORY FROM THE INTERNATIONAL CRIMINAL COURT.—Notwithstanding section 1781 of title 28, United States Code, or any other provision of law, no agency of the United States Government may transmit for execution any letter rogatory issued, or other request for cooperation made, by the International Criminal Court to the tribunal, officer, or agency in the United States to whom it is addressed.

(d) PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—Notwithstanding any other provision of law, no agency or entity of the United States Government or of any State or local government may extradite any person from the United States to the International Criminal Court, nor support the transfer of any United States citizen or permanent resident alien to the International Criminal Court.

(e) PROHIBITION ON PROVISION OF SUPPORT TO THE INTERNATIONAL CRIMINAL COURT.—Notwithstanding any other provision of law, no agency or entity of the United States Government or of any State or local government, including any court, may provide support to the International Criminal Court.

(f) PROHIBITION ON USE OF APPROPRIATED FUNDS TO ASSIST THE INTERNATIONAL CRIMINAL COURT.—Notwithstanding any other provision

of law, no funds appropriated under any provision of law may be used for the purpose of assisting the investigation, arrest, detention, extradition, or prosecution of any United States citizen or permanent resident alien by the International Criminal Court.

(g) RESTRICTION ON ASSISTANCE PURSUANT TO MUTUAL LEGAL ASSISTANCE TREATIES.—The United States shall exercise its rights to limit the use of assistance provided under all treaties and executive agreements for mutual legal assistance in criminal matters, multilateral conventions with legal assistance provisions, and extradition treaties, to which the United States is a party, and in connection with the execution or issuance of any letter rogatory, to prevent the transfer to, or other use by, the International Criminal Court of any assistance provided by the United States under such treaties and letters rogatory.

(h) PROHIBITION ON INVESTIGATIVE ACTIVITIES OF AGENTS.—No agent of the International Criminal Court may conduct, in the United States or any territory subject to the jurisdiction of the United States, any investigative activity relating to a preliminary inquiry, investigation, prosecution, or other proceeding at the International Criminal Court.

SEC. 3005. RESTRICTION ON UNITED STATES PARTICIPATION IN CERTAIN UNITED NATIONS PEACEKEEPING OPERATIONS.

(a) POLICY.—Effective beginning on the date on which the Rome Statute enters into force pursuant to Article 126 of the Rome Statute, the President should use the voice and vote of the United States in the United Nations Security Council to ensure that each resolution of the Security Council authorizing any peacekeeping operation under chapter VI of the charter of the United Nations or peace enforcement operation under chapter VII of the charter of the United Nations permanently exempts, at a minimum, members of the Armed Forces of the United States participating in such operation from criminal prosecution or other assertion of jurisdiction by the International Criminal Court for actions undertaken by such personnel in connection with the operation.

(b) RESTRICTION.—Members of the Armed Forces of the United States may not participate in any peacekeeping operation under chapter VI of the charter of the United Nations or peace enforcement operation under chapter VII of the charter of the United Nations, the creation of which is authorized by the United Nations Security Council on or after the date that the Rome Statute enters into effect pursuant to Article 126 of the Rome Statute, unless the President has submitted to the appropriate congressional committees a certification described in subsection (c) with respect to such operation.

(c) CERTIFICATION.—The certification referred to in subsection (b) is a certification by the President that—

(1) members of the Armed Forces of the United States are able to participate in the peacekeeping or peace enforcement operation without risk of criminal prosecution or other assertion of jurisdiction by the International Criminal Court because, in authorizing the operation, the United Nations Security Council permanently exempted, at a minimum, members of the Armed Forces of the United States participating in the operation from criminal prosecution or other assertion of jurisdiction by the International Criminal Court for actions undertaken by them in connection with the operation;

(2) members of the Armed Forces of the United States are able to participate in the peacekeeping or peace enforcement operation without risk of criminal prosecution or other assertion of jurisdiction by the International Criminal Court because each country in which members of the Armed Forces of the United States participating in the operation will be present either is not a party to the International Criminal Court and has not invoked the jurisdiction of the International Criminal Court pursuant to Article 12 of the Rome Statute, or has entered into an agreement in accordance with Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against members of the Armed Forces of the United States present in that country; or

(3) the national interests of the United States justify participation by members of the Armed Forces of the United States in the peacekeeping or peace enforcement operation.

SEC. 3006. PROHIBITION ON DIRECT OR INDIRECT TRANSFER OF CLASSIFIED NATIONAL SECURITY INFORMATION AND LAW ENFORCEMENT INFORMATION TO THE INTERNATIONAL CRIMINAL COURT.

(a) IN GENERAL.—Not later than the date on which the Rome Statute enters into force, the President shall ensure that appropriate procedures are in place to prevent the transfer of classified national security information and law enforcement information to the International Criminal Court for the purpose of facilitating an investigation, apprehension, or prosecution.

(b) INDIRECT TRANSFER.—The procedures adopted pursuant to subsection (a) shall be designed to prevent the transfer to the United Nations and to the government of any country that is party to the International Criminal Court of classified national security information and law enforcement information that specifically relates to matters known to be under investigation or prosecution by the International Criminal Court, except to the degree that satisfactory assurances are received from the United Nations or that government, as the case may be, that such information will not be made available to the International Criminal Court for the purpose of facilitating an investigation, apprehension, or prosecution.

(c) CONSTRUCTION.—The provisions of this section shall not be construed to prohibit any action permitted under section 3008.

SEC. 3007. PROHIBITION OF UNITED STATES MILITARY ASSISTANCE TO PARTIES TO THE INTERNATIONAL CRIMINAL COURT.

(a) PROHIBITION OF MILITARY ASSISTANCE.—Subject to subsections (b) and (c), and effective 1 year after the date on which the Rome Statute enters into force pursuant to Article 126 of the Rome Statute, no United States military assistance may be provided to the government of a country that is a party to the International Criminal Court.

(b) NATIONAL INTEREST WAIVER.—The President may, without prior notice to Congress, waive the prohibition of subsection (a) with respect to a particular country if he determines and reports to the appropriate congressional committees that it is important to the national interest of the United States to waive such prohibition.

(c) ARTICLE 98 WAIVER.—The President may, without prior notice to Congress, waive the prohibition of subsection (a) with respect to a particular country if he determines and reports to the appropriate congressional committees that such country has entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal court from proceeding against United States personnel present in such country.

(d) EXEMPTION.—The prohibition of subsection (a) shall not apply to the government of—

(1) a NATO member country;

(2) a major non-NATO ally (including Australia, Egypt, Israel, Japan, Jordan, Argentina, the Republic of Korea, and New Zealand); or

(3) Taiwan.

SEC. 3008. AUTHORITY TO FREE MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND CERTAIN OTHER PERSONS DETAINED OR IMPRISONED BY OR ON BEHALF OF THE INTERNATIONAL CRIMINAL COURT.

(a) AUTHORITY.—The President is authorized to use all means necessary and appropriate to bring about the release of any person described in subsection (b) who is being detained or imprisoned by, on behalf of, or at the request of the International Criminal Court.

(b) PERSONS AUTHORIZED TO BE FREED.—The authority of subsection (a) shall extend to the following persons:

(1) Covered United States persons.

(2) Covered allied persons.

(3) Individuals detained or imprisoned for official actions taken while the individual was a covered United States person or a covered allied person, and in the case of a covered allied person, upon the request of such government.

(c) AUTHORIZATION OF LEGAL ASSISTANCE.—When any person described in subsection (b) is arrested, detained, investigated, prosecuted, or imprisoned by, on behalf of, or at the request of the International Criminal Court, the President is authorized to direct any agency of the United States Government to provide—

(1) legal representation and other legal assistance to that person (including, in the case of a person entitled to assistance under section 1037 of title 10, United States Code, representation and other assistance in the manner provided in that section);

(2) exculpatory evidence on behalf of that person; and

(3) defense of the interests of the United States through appearance before the International Criminal Court pursuant to Article 18 or 19 of the Rome Statute, or before the courts or tribunals of any country.

(d) BRIBES AND OTHER INDUCEMENTS NOT AUTHORIZED.—This section does not authorize the payment of bribes or the provision of other such incentives to induce the release of a person described in subsection (b).

SEC. 3009. ALLIANCE COMMAND ARRANGEMENTS.

(a) REPORT ON ALLIANCE COMMAND ARRANGEMENTS.—Not later than 6 months after the date of the enactment of this Act, the President should transmit to the appropriate congressional committees a report with respect to each military alliance to which the United States is party—

(1) describing the degree to which members of the Armed Forces of the United States may, in the context of military operations undertaken by or pursuant to that alliance, be placed under the command or operational control of foreign military officers subject to the jurisdiction of the International Criminal Court because they are nationals of a party to the International Criminal Court; and

(2) evaluating the degree to which members of the Armed Forces of the United States engaged in military operations undertaken by or pursuant to that alliance may be exposed to greater risks as a result of being placed under the command or operational control of foreign military officers subject to the jurisdiction of the International Criminal Court.

(b) DESCRIPTION OF MEASURES TO ACHIEVE ENHANCED PROTECTION FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES.—Not later than 1 year after the date of the enactment of this Act, the President should transmit to the appropriate congressional committees a description of modifications to command and operational control arrangements within military alliances to which the United States is a party that could be made in order to reduce any risks to members of the Armed Forces of the United States identified pursuant to subsection (a)(2).

(c) SUBMISSION IN CLASSIFIED FORM.—The report under subsection (a), and the description of measures under subsection (b), or appropriate parts thereof, may be submitted in classified form.

SEC. 3010. WITHHOLDINGS.

Funds withheld from the United States share of assessments to the United Nations or any other international organization during any fiscal year pursuant to section 705 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and

2001 (as enacted by section 1000(a)(7) of Public Law 106–113; 113 Stat. 1501A–460), are authorized to be transferred to the Embassy Security, Construction and Maintenance Account of the Department of State.

SEC. 3011. APPLICATION OF SECTIONS 3004 AND 3006 TO EXERCISE OF CONSTITUTIONAL AUTHORITIES.

(a) IN GENERAL.—Sections 3004 and 3006 shall not apply to any action or actions with respect to a specific matter involving the International Criminal Court taken or directed by the President on a case-by-case basis in the exercise of the President's authority as Commander in Chief of the Armed Forces of the United States under article II, section 2 of the United States Constitution or in the exercise of the executive power under article II, section 1 of the United States Constitution.

(b) NOTIFICATION TO CONGRESS.—

(1) IN GENERAL.—Subject to paragraph (2), not later than 15 days after the President takes or directs an action or actions described in subsection (a) that would otherwise be prohibited under section 3004 or 3006, the President shall submit a notification of such action to the appropriate congressional committees. A notification under this paragraph shall include a description of the action, a determination that the action is in the national interest of the United States, and a justification for the action.

(2) EXCEPTION.—If the President determines that a full notification under paragraph (1) could jeopardize the national security of the United States or compromise a United States law enforcement activity, not later than 15 days after the President takes or directs an action or actions referred to in paragraph (1) the President shall notify the appropriate congressional committees that an action has been taken and a determination has been made pursuant to this paragraph. The President shall provide a full notification under paragraph (1) not later than 15 days after the reasons for the determination under this paragraph no longer apply.

(c) CONSTRUCTION.—Nothing in this section shall be construed as a grant of statutory authority to the President to take any action.

SEC. 3012. NONDELEGATION.

The authorities vested in the President by sections 3003 and 3011(a) may not be delegated by the President pursuant to section 301 of title 3, United States Code, or any other provision of law. The authority vested in the President by section 3005(c)(3) may not be delegated by the President pursuant to section 301 of title 3, United States Code, or any other provision of law to any official other than the Secretary of Defense, and if so delegated may not be subdelegated.

SEC. 3013. DEFINITIONS.

As used in this title and in section 706 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

(2) CLASSIFIED NATIONAL SECURITY INFORMATION.—The term ''classified national security information'' means information that is classified or classifiable under Executive Order 12958 or a successor Executive order.

(3) COVERED ALLIED PERSONS.—The term ''covered allied persons'' means military personnel, elected or appointed officials, and other persons employed by or working on behalf of the government of a NATO member country, a major non-NATO ally (including Australia, Egypt, Israel, Japan, Jordan, Argentina, the Republic of Korea, and New Zealand), or Taiwan, for so long as that government is not a party to the International Criminal Court and wishes its officials and other persons working on its behalf to be exempted from the jurisdiction of the International Criminal Court.

(4) COVERED UNITED STATES PERSONS.—The term ''covered United States persons'' means members of the Armed Forces of the United States, elected or appointed officials of the United States Government, and other persons employed by or working on behalf of the United States Government, for so long as the United States is not a party to the International Criminal Court.

(5) EXTRADITION.—The terms ''extradition'' and ''extradite'' mean the extradition of a person in accordance with the provisions of chapter 209 of title 18, United States Code, (including section 3181(b) of such title) and such terms include both extradition and surrender as those terms are defined in Article 102 of the Rome Statute.

(6) INTERNATIONAL CRIMINAL COURT.—The term ''International Criminal Court'' means the court established by the Rome Statute.

(7) MAJOR NON-NATO ALLY.—The term ''major non-NATO ally'' means a country that has been so designated in accordance with section 517 of the Foreign Assistance Act of 1961.

(8) PARTICIPATE IN ANY PEACEKEEPING OPERATION UNDER CHAPTER VI OF THE CHARTER OF THE UNITED NATIONS OR PEACE ENFORCEMENT OPERATION UNDER CHAPTER VII OF THE CHARTER OF THE UNITED NATIONS.—The term ''participate in any peacekeeping operation under chapter VI of the charter of the United Nations or peace enforcement operation under chapter VII of the charter of the United Nations'' means to assign members of the Armed Forces of the United States to a United Nations military command structure as part of a peacekeeping operation under chapter VI of the charter of the United Nations or peace enforcement operation under chapter VII of the charter of the United Nations in which those members of the Armed Forces of the United States are subject to the command or operational control of one or more foreign military officers not appointed in conformity with article II, section 2, clause 2 of the Constitution of the United States.

(9) PARTY TO THE INTERNATIONAL CRIMINAL COURT.—The term ''party to the International Criminal Court'' means a government that has deposited an instrument of ratification, acceptance, approval, or accession to the Rome Statute, and has not withdrawn from the Rome Statute pursuant to Article 127 thereof.

(10) PEACEKEEPING OPERATION UNDER CHAPTER VI OF THE CHARTER OF THE UNITED NATIONS OR PEACE ENFORCEMENT OPERATION UNDER CHAPTER VII OF THE CHARTER OF THE UNITED NATIONS.—The term ''peacekeeping operation under chapter VI of the charter of the United Nations or peace enforcement operation under chapter VII of the charter of the United Nations'' means any military operation to maintain or restore international peace and security that—

(A) is authorized by the United Nations Security Council under chapter VI or VII of the charter of the United Nations; and

(B) is paid for from assessed contributions of United Nations members that are made available for peacekeeping or peace enforcement activities.

(11) ROME STATUTE.—The term ''Rome Statute'' means the Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on July 17, 1998.

(12) SUPPORT.—The term ''support'' means assistance of any kind, including financial support, transfer of property or other material support, services, intelligence sharing, law enforcement cooperation, the training or detail of personnel, and the arrest or detention of individuals.

(13) UNITED STATES MILITARY ASSISTANCE.—The term ''United States military assistance'' means—

(A) assistance provided under chapter 2 or 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.); or

(B) defense articles or defense services furnished with the financial assistance of the United States Government, including through loans and guarantees, under section 23 of the Arms Export Control Act (22 U.S.C. 2763).

SEC. 3014. REPEAL OF LIMITATION.

The Department of Defense Appropriations Act, 2002 (division A of Public Law 107–117) is amended by striking section 8173.

SEC. 3015. ASSISTANCE TO INTERNATIONAL EFFORTS.

Nothing in this title shall prohibit the United States from rendering assistance to international efforts to bring to justice Saddam Hussein, Slobodan Milosovic, Osama bin Laden, other members of Al Queda, leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity.

TITLE IV—MAIL DELIVERY IN ALASKA

SEC. 4001. RURAL SERVICE IMPROVEMENT.

(a) SHORT TITLE.—This title may be cited as the ''Rural Service Improvement Act of 2002''.

(b) FINDINGS.—Congress makes the following findings:

(1) The State of Alaska is the largest State in the Union and has a very limited system of roads connecting communities.

(2) Alaska has more pilots per capita than any other State in the Union.

(3) Pilots flying in Alaska are often the most skilled and best-prepared pilots in the world.

(4) Air travel within the State of Alaska is often hampered by severe weather conditions and treacherous terrain.

(5) The United States Government owns nearly ⅔ of Alaska's landmass, including large tracts of land separating isolated communities within the State.

(6) Such Federal ownership has inhibited the ability of Alaskans to build roads connecting isolated communities.

(7) Most communities and a large portion of the population within the State can only be reached by air.

(8) The vast majority of food items and everyday necessities destined for these isolated communities and populations can only be transported through the air.

(9) The Intra-Alaska Bypass Mail system, created by Congress and operated by the United States Postal Service under section 5402 of title 39, United States Code, with input from the Department of Transportation, connecting hundreds of rural and isolated communities within the State, is a critical piece of the Alaska and the national transportation system. The system is like a 4-legged stool, designed to—

(A) provide the most affordable means of delivering food and everyday necessities to these rural and isolated communities;

(B) establish a system whereby the Postal Service can meet its obligations to deliver mail to every house and business in America;

(C) support affordable and reliable passenger service; and

(D) support affordable and reliable nonmail freight service.

(10) Without the Intra-Alaska Bypass Mail system—

(A) it would be difficult and more expensive for the Postal Service to meet its obligation of delivering mail to every house and business in America; and

(B) food, medicine, freight, and everyday necessities and passenger service for these rural and isolated communities would cost several times the current level.

(11) Attempts by Congress to support passenger and nonmail freight service in Alaska using the Intra-Alaska Bypass Mail system have yielded some positive results, but some carriers have been manipulating the system by carrying few, if any, passengers and little nonmail

freight while earning most of their revenues from the carriage of nonpriority bypass mail.

(12) As long as the Federal Government continues to own large tracts of land within the State of Alaska which impedes access across these lands to connect isolated communities, it is in the best interest of the Postal Service, the residents of Alaska and the United States—

(A) to ensure that the Intra-Alaska Bypass Mail system remains strong, viable, and affordable for the Postal Service;

(B) to ensure that residents of rural and isolated communities in Alaska continue to have affordable, reliable, and safe passenger service;

(C) to ensure that residents of rural and isolated communities in Alaska continue to have affordable, reliable, and safe nonmail freight service;

(D) to encourage that intra-Alaska air carriers move toward safer, more secure, and more reliable air transportation under the Federal Aviation Administration's guidelines and in accordance with part 121 of title 14, Code of Federal Regulations, where such operations are supported by the needs of the community; and

(E) that Congress, pursuant to the authority granted under Article I, section 8 of the United States Constitution to establish Post Offices and post roads, make changes to ensure that the Intra-Alaska Bypass Mail system continues to be used to support substantial passenger and nonmail freight service and to reduce costs for the Postal Service.

(c) SELECTION OF CARRIERS OF NONPRIORITY BYPASS MAIL TO CERTAIN POINTS IN ALASKA.—

(1) DEFINITIONS.—Section 5402 of title 39, United States Code, is amended—

(A) by striking subsection (e);

(B) by redesignating subsections (a) through (d) as subsections (b) through (e), respectively; and

(C) by inserting before subsection (b), as redesignated, the following:

''(a) In this section—

''(1) the term 'acceptance point' means the point at which nonpriority bypass mail originates;

''(2) the terms 'air carrier', 'interstate air transportation', and 'foreign air transportation' have the meanings given such terms in section 40102(a) of title 49, U.S.C.;

''(3) the term 'base fare' is the fare paid to the carrier issuing the passenger ticket or carrying nonmail freight which may entail service being provided by more than 1 carrier;

''(4) the term 'bush carrier' means a carrier operating aircraft certificated within the payload capacity requirements of subsection (g)(1)(D)(i) on a city pair route;

''(5) the term 'bush passenger carrier' means a passenger carrier that meets the requirements of subsection (g)(1)(D)(i) and provides passenger service on a city pair route;

''(6) the term 'bush route' means an air route in which only a bush carrier is tendered nonpriority bypass mail between the origination point, being either an acceptance point or a hub, as determined by the Postal Service, and the destination city;

''(7) the term 'city pair' means service between an origin and destination city pair;

''(8) the term 'composite rate'—

''(A) means a combination of mainline and bush rates paid to a bush carrier for a direct flight from an acceptance point to a bush destination beyond a hub point; and

''(B) shall be based on the mainline rate paid to the hub, plus the lowest bush rate paid to bush carriers in the State of Alaska;

''(9) the term 'equitable tender' means the practice of the Postal Service of equitably distributing mail on a fair and reasonable basis between those air carriers that offer equivalent services and costs between 2 communities in accordance with the regulations of the Postal Service;

''(10) the term 'existing mainline carrier' means a mainline carrier (as defined in this section) that on January 1, 2001, was—

''(A) certified under part 121;

''(B) qualified to provide mainline nonpriority bypass mail service; and

''(C) actually engaged in the carriage of mainline nonpriority bypass mail through scheduled service within the State of Alaska;

''(11) the term 'freight service' means the transport of cargo that otherwise cannot be carried on a qualified passenger aircraft because of—

''(A) size or weight restrictions imposed on the aircraft or carrier providing the service; or

''(B) prohibitions on the carriage of passengers and hazardous materials on the same flight;

''(12) the term 'mainline carrier' means a carrier operating aircraft under part 121 and certificated within the payload capacity requirements of subsection (g)(1)(D)(ii) on a given city pair route;

''(13) the term 'mainline route' means a city pair in which a mainline carrier is tendered nonpriority bypass mail;

''(14) the term 'new', when referencing a carrier, means a carrier that—

''(A) meets the respective requirements of subsection (g)(1)(D)(i) or (ii), depending on the type of route being served and the size of aircraft being used to provide service; and

''(B) began providing nonpriority bypass mail service on a city pair route within the State of Alaska after January 1, 2001;

''(15) the term 'part 121' means part 121 of title 14, Code of Federal Regulations;

''(16) the term 'part 135' means part 135 of title 14, Code of Federal Regulations;

''(17) the term 'scheduled service' means—

''(A) flights are operated in common carriage available to the general public under a published schedule;

''(B) flight schedules are announced in advance to the general public in systems specified by the Postal Service, in addition to the Official Airline Guide or the air cargo equivalent of that Guide;

''(C) flights depart whether full or not; and

''(D) customers contract for carriage separately on a regular basis;

''(18) the term 'Secretary' means the Secretary of Transportation;

''(19) the term '121 bush passenger carrier' means a bush passenger carrier providing passenger service on bush routes under part 121;

''(20) the term '121 mainline passenger carrier' means a mainline carrier providing passenger service through scheduled service on routes under part 121;

''(21) the term '121 passenger aircraft' means an aircraft flying passengers on a city pair route that is operated under part 121;

''(22) the term '121 passenger carrier' means a passenger carrier that provides scheduled service under part 121;

''(23) the term '135 bush passenger carrier' means a bush passenger carrier providing passenger service through scheduled service on bush routes under part 135; and

''(24) the term '135 passenger carrier' means a passenger carrier that provides scheduled service under part 135.''.

(2) REQUIREMENTS FOR SELECTION.—Section 5402(g)(1) of title 39, United States Code, is amended—

(A) in the matter preceding subparagraph (A), by inserting after ''in the State of Alaska,'' the following: ''shall adhere to an equitable tender policy within a qualified group of carriers, in accordance with the regulations of the Postal Service, and'';

(B) in subparagraph (C) by striking ''to the best'' and all that follows and inserting a semicolon; and

(C) in subparagraph (D) by inserting ''with at least 3 scheduled (noncontract) flights per week between two points'' after ''scheduled service''.

(3) APPLICATION OF RATES.—Section 5402(g)(2) of title 39, United States Code, is amended—

(A) by striking ''and'' at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting a semicolon; and

(C) by adding at the end the following:

''(C) shall offer a bush passenger carrier providing service on a route between an acceptance point and a hub not served by a mainline carrier the opportunity to receive equitable tender of nonpriority bypass mail at mainline service rates when a mainline carrier begins serving that route if the bush passenger carrier—

''(i) meets the requirements of paragraph (1);

''(ii) provided at least 20 percent of the passenger service (as calculated in subsection (h)(5)) between such city pair for the 6 months immediately preceding the date on which the bush carrier seeks such tender; and

''(iii) continues to provide not less than 20 percent of the passenger service on the city pair while seeking such tender;

''(D) shall offer bush passenger carriers and nonmail freight carriers the opportunity to receive equitable tender of nonpriority bypass mail at mainline service rates from a hub point to a destination city if the city pair is also being served by a mainline carrier and—

''(i) for a passenger carrier—

''(I) the carrier meets the requirements of paragraph (1);

''(II) the carrier provided at least 20 percent of the passenger service (as calculated in subsection (h)(5)) on the city pair route for the 6 months immediately preceding the date on which the carrier seeks such tender; and

''(III) the carrier continues to provide not less than 20 percent of the passenger service on the route; or

''(ii) for a nonmail freight carrier—

''(I) the carrier meets the requirements of paragraph (1); and

''(II) the carrier provided at least 25 percent of the nonmail freight service (as calculated in subsection (i)(6)) on the city pair route for the 6 months immediately preceding the date on which the carrier seeks such tender;

''(E)(i) shall not offer equitable tender of nonpriority mainline bypass mail at mainline rates to a bush carrier operating from an acceptance point to a hub point, except as described in subparagraph (C); and

''(ii) may tender nonpriority bypass mail at bush rates to a bush carrier if the Postal Service determines that—

''(I) the bush carrier meets the requirements of paragraph (1);

''(II) the service to be provided on such route by the bush carrier is not otherwise available through direct mainline service; and

''(III) tender of mail to such bush carrier will not decrease the efficiency of nonpriority bypass mail service (in terms of payments to all carriers providing service on the city pair route and timely delivery) for the route;

''(F) may offer tender of nonpriority bypass mail to a passenger carrier from an acceptance point to a destination city beyond a hub point at a composite rate if the Postal Service determines that—

''(i) the carrier provides passenger service in accordance with the requirements of subsection (h)(2);

''(ii) the carrier qualifies under subsection (h) to be tendered nonpriority bypass mail out of the hub point being bypassed;

''(iii) the tender of such mail will not decrease efficiency of delivery of nonpriority bypass mail service into or out of the hub point being bypassed; and

''(iv) such tender will result in reduced payments to the carrier by the Postal Service over flying the entire route; and

''(G) notwithstanding subparagraph (F), shall offer equitable tender of nonpriority mail in proportion to passenger and nonmail freight mail pools described in this section between qualified passenger and nonmail freight carriers on a route from an acceptance point to a bush destination at a composite rate if—

''(i)(I) for a passenger carrier, the carrier receiving the composite rate provided 20 percent of

the passenger service on the city pair route for the 12 months immediately preceding the date on which the carrier seeks tender of such mail; or

''(II) for a nonmail freight carrier, the carrier receiving the composite rate provided at least 25 percent of the nonmail freight service for the 12 months immediately preceding the date on which the carrier seeks tender of such mail; and

''(ii)(I) nonpriority mail was being tendered to a passenger carrier or a nonmail freight carrier at a composite rate on such city pair route on January 1, 2000; or

''(II) the hub being bypassed was not served by a mainline carrier on January 1, 2000.

The tender of nonpriority bypass mail under subparagraph (G) shall be on an equitable basis between the qualified carriers that provide the direct service on the city pair route and the qualified carriers that provide service between the hub point being bypassed and the destination point, based on the volume of nonpriority bypass mail on both routes.''.

(4) SELECTION OF CARRIERS TO HUB POINTS.—Section 5402(g) of title 39, United States Code, is amended by adding at the end the following:

''(4)(A) Except as provided under subparagraph (B) and paragraph (5), the Postal Service shall select only existing mainline carriers to provide nonpriority bypass mail service between an acceptance point and a hub point in the State of Alaska.

''(B) The Postal Service may select a carrier other than an existing mainline carrier to provide nonpriority bypass mail service on a mainline route in the State of Alaska if—

''(i) the Postal Service determines (in accordance with criteria established in advance by the Postal Service) that the mail service between the acceptance point and the hub point is deficient and provides written notice of the determination to existing mainline carriers to the hub point; and

''(ii) after the 30-day period following issuance of notice under clause (i), including notice of inadequate capacity, the Postal Service determines that deficiencies in service to the hub point have not been eliminated.

''(5)(A) The Postal Service shall offer equitable tender of nonpriority bypass mail to a new 121 mainline passenger carrier entering a mainline route in the State of Alaska, if that carrier—

''(i) meets the requirements of subsection (g)(1)(D)(ii); and

''(ii) has provided at least 50 percent of the number of insured passenger seats as the number of available passenger seats being provided by the mainline passenger carrier providing the greatest number of available passenger seats on that route for the 6 months immediately preceding the date on which such carrier seeks tender.

''(B) A new 121 mainline passenger carrier that is tendered nonpriority mainline bypass mail under subparagraph (A)—

''(i) shall be eligible for equitable tender of such mail only on city pair routes where the carrier meets the conditions of subparagraph (A);

''(ii) may not count the passenger service provided under subparagraph (A) toward the carrier meeting the minimum requirements of this section; and

''(iii) shall provide at least 20 percent of the passenger service (as determined for bush passenger carriers in subsection (h)(5)) on such route to remain eligible to be tendered nonpriority mainline bypass mail.

''(C) Notwithstanding paragraphs (1)(B) and (5)(A), a new 121 mainline passenger carrier, otherwise qualified under this subsection, may immediately receive equitable tender of nonpriority mainline bypass mail to a hub point if it meets the requirements of subsections (g)(1) (A), (C), and (D) and (h)(2)(B) and—

''(i) all qualified 121 mainline passenger carriers discontinue service on that city pair route; or

''(ii) no 121 mainline passenger carrier serves that city pair route.

''(D) A carrier operating under a code share agreement on the date of enactment of the Rural Service Improvement Act of 2002 that received tender of nonpriority mainline bypass mail on a city pair route may count the passenger service provided under the entire code share arrangement on such route if the code share agreement terminates. That carrier shall continue to provide at least 20 percent of the passenger service (as determined for bush passenger carriers in subsection (h)(5)) between the city pair as a 121 mainline passenger carrier while seeking such tender.

''(6)(A) Notwithstanding subsection (g)(1)(B), passenger carriers providing Essential Air Service under a Department of Transportation order issued under subchapter II of chapter 417 of title 49, U.S.C., shall be tendered all nonpriority mail, in addition to all nonpriority bypass mail, by the Postal Service to destination cities served by the Essential Air Service flights consistent with that order unless the Postal Service finds that the Essential Air Service carrier's service does not meet the needs of the Postal Service.

''(B) Service provided under this paragraph, including service provided to points served in conjunction with service being subsidized under the Essential Air Service contract, may not be applied toward any of the minimum eligibility requirements of this section.''.

(5) SELECTION OF CARRIERS TO BUSH POINTS.—Section 5402 of title 39, United States Code, is amended by adding at the end the following:

''(h)(1) Except as provided under paragraph (7), on a given city pair route, the Postal Service shall offer equitable tender of 70 percent of the nonpriority bypass mail on that route to all carriers providing scheduled passenger service in accordance with part 121 or part 135 that—

''(A) meet the requirements of subsection (g)(1);

''(B) provided 20 percent or more of the passenger service (as calculated in paragraph (5)) between the city pair for the 12 months preceding the date on which the 121 passenger aircraft or the 135 passenger carrier seek tender of nonpriority bypass mail; and

''(C) meet the requirements of paragraph (2).

''(2) To remain eligible for equitable tender under this subsection, the carrier or aircraft shall—

''(A) continue to provide not less than 20 percent of the passenger service on the city pair route for which the carrier is seeking the tender of such nonpriority bypass mail;

''(B)(i) for operations under part 121, operate aircraft type certificated to carry at least 19 passengers;

''(ii) for operations under part 135, operate aircraft type certificated to carry at least 5 passengers; or

''(iii) for operations under part 135 where only a water landing is available, operate aircraft type certificated to carry at least 3 passengers;

''(C) insure all available passenger seats on the city pair route on which the carrier seeks tender of such mail; and

''(D) operate flights under its published schedule.

''(3)(A) Except as provided under subparagraph (E), if a 135 passenger carrier serves a city pair route and meets the requirements of paragraph (1) or (2) when a 121 passenger carrier becomes qualified to be tendered nonpriority bypass mail on such route with a 121 passenger aircraft in accordance with paragraphs (1) and (2), the qualifying 135 passenger carriers on that route shall convert to operations with a 121 passenger aircraft within 5 years after the 121 passenger aircraft begins receiving tender on that route in order to remain eligible for equitable tender under paragraph (1). The 135 carrier shall—

''(i) begin the process of conversion not later than 2 years after the 121 passenger aircraft begins carrying nonpriority bypass mail on that route; and

''(ii) submit a part 121 compliance statement not later than 4 years after the 121 passenger aircraft begins carrying nonpriority bypass mail on that route.

''(B) Completion of conversion under subparagraph (A) shall not be required if all 121 passenger carriers discontinue the carriage of nonpriority bypass mail with 121 passenger aircraft on the city pair route.

''(C) Any qualified carrier operating in the State of Alaska under this section may request a waiver from subparagraph (A). Such a request, at the discretion of the Secretary, may be granted for good cause shown. The requesting party shall state the basis for such a waiver.

''(D) If 6 years and 3 months after the date of enactment of the Rural Service Improvement Act of 2002, a 135 passenger carrier is providing service on a city pair route and a 121 passenger aircraft becomes eligible to receive tender of nonpriority bypass mail on that route, that 135 passenger carrier shall convert to operations under part 121 within 12 months of the 121 passenger carrier being tendered nonpriority bypass mail. The Postal Service shall not continue the tender of nonpriority bypass mail to a 135 passenger carrier that fails to convert to part 121 operations within 12 months after the 121 passenger carrier being tendered such mail under this paragraph.

''(E) Notwithstanding the requirements of this subsection, if only 1 passenger carrier or aircraft is qualified to be tendered nonpriority bypass mail as a passenger carrier or aircraft on a city pair route, the Postal Service shall tender 20 percent of the nonpriority bypass mail described under paragraph (1) to the passenger carrier or aircraft providing the next highest level of passenger service on such route.

''(4) Qualification for the tender of mail under this subsection shall not be counted toward the minimum qualifications necessary to be tendered nonpriority bypass mail on any other route.

''(5)(A)(i) In this section, the percent of the passenger service shall be calculated using the data described under clause (ii). To ensure accurate reporting of market share the Postal Service shall compare the resulting percentage to the data collected under subsection (k). Any carrier purposefully falsifying data or significantly misstating market share in an attempt to qualify for tender of nonpriority bypass mail may be subject to penalties described in subsection (o).

''(ii) The Postal Service shall calculate the percent of passenger service provided by a carrier on a city pair route by calculating the lesser of—

''(I) the amount of the passenger excise tax paid by or on behalf of a carrier, as determined by reviewing the collected amount of base fares for passengers actually flown by a carrier from the origination point to the destination point, divided by the value of the total passenger excise taxes, as determined by reviewing the collected amount of base fares paid by or on behalf of all passenger carriers providing service from the hub point to the bush destination point; or

''(II) the amount of half of the passenger excise tax paid by or on behalf of a carrier, as determined by reviewing the collected amount of base fares for passengers actually flown by a carrier on the city pair route, divided by the value of the total passenger excise taxes, as determined by reviewing the collected amount of base fares paid by or on behalf of all passenger carriers providing service between the origination point and the destination point.

''(B) For the purposes of calculating passenger service as described under subparagraph (A), a bush passenger carrier providing intervillage bush passenger service may include the carriage of passengers carried along any point of the route between the route's origination point and the final destination point. Such calculation shall be based only on the carriage of passengers on regularly scheduled flights and only on flights being flown in a direction away from

the hub point. Passenger service provided on chartered flights shall not be included in the carrier's calculation of passenger service.

''(6)(A) The Secretary shall establish new bush rates for passenger carriers receiving tender of nonpriority bypass mail under this subsection.

''(B) The Secretary shall establish a bush rate based on data collected under subsection (k) from 121 bush passenger carriers. Such rates shall be paid to all bush passenger carriers operating on city pair routes where a 121 bush passenger carrier is tendered nonpriority bypass mail.

''(C) The Secretary shall establish a bush rate based on data collected under subsection (k) from 135 bush passenger carriers. Such rates shall be paid to all bush passenger carriers operating on city pair routes where no 121 bush passenger carrier is tendered nonpriority bypass mail.

''(D) The Secretary shall establish a bush rate based on data collected under subsection (k) from bush passenger carriers operating aircraft on city pair routes where only water landings are available. Such rates shall be paid to all bush passenger carriers operating on the city pair routes where only water landings are available.

''(7) The percentage rate in paragraph (1) shall be 75 percent 3 years and 3 months after the date of enactment of the Rural Service Improvement Act of 2002.

''(i)(1) Except as provided under paragraph (7), on a given city pair route, the Postal Service shall offer equitable tender of 20 percent of the nonpriority bypass mail on such route to those carriers transporting 25 percent or more of the total nonmail freight (in revenue or weight as determined by the Postal Service), for the 12 months immediately preceding the date on which the freight carrier seeks tender of nonpriority bypass mail.

''(2) To remain eligible for equitable tender under this subsection, a freight carrier shall continue to provide not less than 25 percent of the nonmail freight service on the city pair route for which the carrier is seeking tender of such mail.

''(3) If a new freight carrier enters a market, that freight carrier shall meet the minimum requirements of subsection (g)(1) and shall operate for 12 months on a given city pair route before being eligible for equitable tender of nonpriority bypass mail on that route.

''(4) If no carrier qualifies for tender of nonpriority bypass mail under this subsection, such mail to be divided under this subsection, as described in paragraph (1), shall be tendered to the nonmail freight carrier providing the highest percentage of nonmail freight service (in terms of revenue or weight as determined by the Postal Service as calculated under paragraph (6)) on the city pair route. If no nonmail freight carrier is present on a route to receive tender of nonpriority bypass mail under this paragraph, the nonpriority bypass mail to be divided under paragraph (1) shall be divided equitably among carriers qualified under subsection (h).

''(5) Qualification for the tender of mail under this subsection shall not be counted toward the minimum qualifications necessary to be tendered nonpriority bypass mail on any other route.

''(6)(A) In this subsection, the percent of nonmail freight shall be determined by calculating the lesser of—

''(i) the amount of the freight excise tax paid by or on behalf of a carrier, as determined by reviewing the collected amount of base fares for nonmail freight actually flown by a carrier from the origination point to the destination point, divided by the value of the total nonmail freight excise taxes, as determined by reviewing the collected amount of base fares paid by or on behalf of all nonmail freight carriers providing service from the origination point to the destination point; or

''(ii) the amount of half of the nonmail freight excise tax paid by or on behalf of a carrier, as determined by reviewing the collected amount of base fares for nonmail freight actually flown by a carrier on the city pair route, divided by the value of the total nonmail freight excise taxes, as determined by reviewing the collected amount of base fares paid by or on behalf of all nonmail freight carriers providing service on the city pair route.

''(B) To ensure accurate reporting of market share the Postal Service shall compare the resulting percentage under subparagraph (A) to the percent of nonmail freight carried on a city pair route as calculated from data provided pursuant to subsection (k), by dividing the revenue of, or weight of (as determined by the Postal Service), nonmail freight earned by or carried by a carrier from the transport of nonmail freight from an origination point to a destination point by the total amount of revenue earned, or the weight of, nonmail freight carried (as determined by the Postal Service) by all carriers from the transport of nonmail freight from the origination point to the destination point. Any carrier purposefully falsifying data or significantly misstating market share in an attempt to qualify for tender of nonpriority bypass mail may be subject to penalties described in subsection (o).

''(7) The percentage rate in paragraph (1) shall be 25 percent 3 years and 3 months after the date of enactment of the Rural Service Improvement Act of 2002.

''(j)(1) Except as provided by paragraph (3), there shall be equitable tender of 10 percent of the nonpriority bypass mail to all carriers on each city pair route meeting the requirements of subsection (g)(1) that do not otherwise qualify for tender under subsection (h) or (i).

''(2) If no carrier qualifies under this subsection with respect to a city pair route, the 10 percent of nonpriority bypass mail allocated under paragraph (1) shall be divided evenly between the pools described under subsections (h) and (i) to be equitably tendered among qualified carriers under such subsections, such that—

''(A) the amount of nonpriority bypass mail available for tender among qualified carriers under subsection (h) shall be 75 percent; and

''(B) the amount of nonpriority bypass mail available for tender among qualified carriers under subsection (i) shall be 25 percent.

''(3)(A) Except as provided by subparagraph (B), the percentage rate under paragraph (1) shall be 0 percent 3 years and 3 months after the date of enactment of the Rural Service Improvement Act of 2002.

''(B) The percentage rate under paragraph (1) shall remain 10 percent for equitable tender for 6 years and 3 months after the date of enactment of the Rural Service Improvement Act of 2002 for a nonpriority bypass mail carrier on bush routes originating from the main hub of the carrier designated under subparagraph (C), if the carrier seeking the tender of such mail—

''(i) meets the requirements of subsection (g)(1);

''(ii) is not qualified under subsection (h) or (i);

''(iii) operates routes originating from the main hub of the carrier designated under subparagraph (C); and

''(iv) has invested at least $500,000 in a physical hanger facility prior to January 1, 2002 in such a hub city.

''(C) For purposes of subparagraph (B), a carrier may designate only one hub city as its main hub and once such designation is transmitted to the Postal Service it may not be changed. Such selection and transmission must be transmitted to the Postal Service within 6 months of the date of enactment of the Rural Service Improvement Act of 2002. A carrier attempting to receive tender of nonpriority bypass mail under this subsection shall not be eligible for such tender after the carrier becomes qualified for tender of nonpriority bypass mail under subsection (h) or (i) on any route. The purchase of another carrier's hanger facility after such date of enactment shall not be considered sufficient to meet the requirement of subparagraph (B)(iv).

''(k)(1) Not less than every 2 years, in conjunction with annual updates, the Secretary shall review the need for a bush mail rate investigation. The Secretary shall use show cause procedures to speedily and more accurately determine the cost of providing bush mail service. In determining such rates, the Secretary shall not take into account the cost of passenger insurance rates or premiums paid by the passenger carriers or other costs associated with passenger service.

''(2) In order to assure sufficient, reliable, and timely traffic data to meet the requirements of this subsection, the Secretary shall require—

''(A) the monthly submission of the bush carrier's data on T–100 diskettes, or any other suitable form of data collection, as determined by the Secretary; and

''(B) the carriers to retain all books, records, and other source and summary documentation to support their reports and to preserve and maintain such documentation in a manner that readily permits the audit and examination by representatives of the Postal Service or the Secretary.

''(3) Documentation under paragraph (2) shall be retained for 7 years or until the Secretary indicates that the records may be destroyed. Copies of flight logs for aircraft sold or disposed of shall be retained.

''(4) Carriers qualified to be tendered nonpriority bypass mail shall submit to the Secretary the number and type of aircraft in the carrier's fleet, the level of passenger insurance covering its fleet, and the name of the insurance company providing such coverage.

''(5) Not later than 30 days after the last day of each calendar month, carriers shall report to the Secretary the excise taxes paid by city pair to the Department of the Treasury and the weight of and revenue earned by the carriage of nonmail freight. Final compiled data shall be made available to carriers providing service in the hub.

''(l) No qualified carrier may be tendered nonpriority bypass mail under subsections (h) and (i) simultaneously on a route unless no other carrier is tendered mail under either subsection.

''(m)(1) Carriers qualifying for tender under subsections (h) and (i) simultaneously shall be tendered nonpriority bypass mail under subsection (h).

''(2) A carrier shall be tendered nonpriority bypass mail under subsection (i) if that carrier—

''(A) was qualified under both subsections (h) and (i) simultaneously; and

''(B) becomes unqualified under subsection (h) but remains qualified under subsection (i).

''(n)(1) A carrier operation resulting from a merger or acquisition between any 2 carriers operating between points in Alaska shall have the passenger and nonmail freight of all such merged or acquired carriers on the applicable route counted toward meeting the resulting carrier's minimum requirements to receive equitable tender of nonpriority bypass mail on such route for the 12-month period following the merger or acquisition.

''(2) After the 12-month period described under paragraph (1), the carrier resulting from the merger or acquisition shall demonstrate that the carrier meets the minimum passenger or nonmail freight carriage requirements of this section to continue receiving tender of such mail.

''(o) In addition to any penalties applied to a carrier by the Federal Aviation Administration or the Secretary, any carrier that significantly misstates passenger or nonmail freight data required to be reported under this section on any route, in an attempt to qualify for tender of nonpriority bypass mail, shall receive—

''(1) a 1-month suspension of tender of nonpriority bypass mail on the route where the data was misstated for the first offense;

''(2) a 6-month suspension of tender of nonpriority bypass mail on the route where the data was misstated for the second offense;

''(3) a 1-year suspension of tender of all nonpriority bypass mail in the entire State of Alaska for the third offense in the State; and

''(4) a permanent suspension of tender of all nonpriority bypass mail in the entire State of Alaska for the fourth offense in the State.

''(p)(1) The Postal Service or the Secretary, in carrying out subsection (g)(2), (h), or (i), may deny equitable tender to an otherwise qualified carrier who does not operate under this section in good faith or under the intent of the 'Rural Service Improvement Act of 2002'.

''(2) The Postal Service or the Secretary may waive any provision of subsection (h) or (i), if the carrier provides substantial passenger or nonmail freight service on the route where the carrier seeks tender of nonpriority mail and nonpriority bypass mail.

''(3) To ensure adequate competition among passenger and nonmail freight carriers on a mainline route the Postal Service or the Secretary may waive the requirements of subsection (g) (1)(D), (2)(E), (4), or (5), or any provision of subsection (h), if—

''(A) a 121 bush passenger carrier seeks tender of nonpriority mail or nonpriority bypass mail on a mainline route not served by a 121 mainline passenger carrier and the 121 bush passenger carrier provides substantial passenger or nonmail freight service on the route; or

''(B) a carrier meeting the requirements of subsection (g)(1)(D)(ii) seeks tender of nonpriority bypass mail and provides substantial nonmail freight service on the city pair route.

Waivers granted under this paragraph shall cease to be valid once a qualified mainline carrier begins providing service and seeks tender of nonpriority bypass mail in accordance with this section on the city pair route. The receipt of waivers and subsequent operation of service on a city pair route under this subsection shall not be counted toward meeting the requirements of any part of this section for any other city pair route. In granting waivers under this paragraph and offering equitable tender of nonpriority bypass mail the Postal Service or the Secretary shall give preference to passenger service needs over nonmail freight needs on a city pair route.

''(4) In granting waivers for or denying tender to carriers under this subsection, the Postal Service or the Secretary shall consider in the following order of importance—

''(A) the passenger needs of the destination to be served (including amount and level);

''(B) the nonmail freight needs of the destination to be served;

''(C) the amount of nonpriority bypass mail service already available to the destination;

''(D) the mail needs of the destination to be served;

''(E) the savings to the Postal Service in terms of payments made to carriers;

''(F) the amount or level of passenger service already available to the destination; and

''(G) the amount of nonmail freight service already available to the destination.

''(q) The Secretary shall make a regular review of carriers receiving, or attempting to qualify to receive, equitable tender of nonpriority bypass mail. If the Secretary suspends or revokes an operating certificate, the Secretary shall notify the Postal Service. Upon such notification, the Postal Service shall cease tender of mail to such carrier until the Secretary certifies the carrier is operating in a safe manner. Upon such receipt, the carrier shall demonstrate that it otherwise meets the minimum carriage requirements of this section before being tendered mail under this section.

''(r) The Postal Service shall have the authority to tender nonpriority bypass mail to any carrier that meets the requirements of subsection (g)(1) on any route on an emergency basis. Such emergency tender shall cease when a carrier qualifies for tender on such route under the terms of this section.

''(s) Notwithstanding any other provision of law, and except for written contracts authorized under subsections (b), (c) and (d) of this section, tender by the Postal Service of any category of mail to a carrier for transportation between any two points within the State of Alaska shall not give rise to any contract between the Postal Service and a carrier, nor shall any such carrier acquire any right in continued or future tender of such mail by virtue of past or present receipt of such mail. This subsection shall apply to any case commenced before, on, or after the date of enactment of this subsection.''.

(d) ACTIONS OF AIR CARRIERS TO QUALIFY.—Beginning 6 months after the date of enactment of this Act, if the Secretary determines, based on the Secretary's findings and recommendations of the Postal Service, that an air carrier being tendered nonpriority bush bypass mail is not taking actions to attempt to qualify as a bush passenger or nonmail freight carrier under section 5402 of title 39, United States Code (as amended by this title), the Postal Service shall immediately cease tender of all nonpriority bypass mail to such carrier.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 39.—Section 5402 of title 39, United States Code, is amended—

(A) in subsections (b) through (e) (as redesignated by this title) and subsection (f) by striking ''Secretary of Transportation'' each place it appears and inserting ''Secretary''; and

(B) in subsection (f)—

(i) by striking ''subsections (a), (b), and (c)'' and inserting ''subsections (b), (c), and (d)''; and

(ii) by striking ''subsection (d)'' and inserting ''subsection (e)''.

(2) TITLE 49.—Section 41901 of title 49, United States Code, is amended in subsection (a), by striking ''5402(d)'' and inserting ''5402(e)''.

(f) REPORTS TO CONGRESS.—Not later than 12 months after the date of enactment of this Act, the Postal Service and the Secretary of Transportation shall submit a report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on the progress of implementing this title.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided under paragraph (2), this title (including the amendments made by this title) shall take effect on the date of enactment of this Act.

(2) SELECTION OF CARRIERS.—Subsection (c)(5) shall take effect 15 months after the date of enactment of this Act.

This Act may be cited as the ''2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States''.

ORDER OF BUSINESS

Mr. DASCHLE. Madam President, I will have more to say about the so-called hate crimes legislation tomorrow.

This is a very important cloture vote we are having tomorrow. I am disappointed that we have not had more opportunities to debate amendments. This bill has been pending, yet no one has come forward to offer amendments.

It makes my point as we file cloture. We indicated a concern for the reports that had been shared with us that some of our colleagues wished to offer—I think the phrase was—''hundreds of amendments'' to the hate crimes bill. We are working under very tight time constraints.

It is my belief that we ought to have an opportunity to offer amendments, to have the debate on the amendments, to bring those amendments to closure, and then have a vote on the hate crimes bill. I have heard colleagues in the Chamber on the other side of the aisle say this has never happened before. If it has not been submitted, tomorrow we will submit for the RECORD the number of times our Republican colleagues did exactly what we did. I think it was 34 times—34 times the bill was offered, and cloture was filed immediately. I do not know how many of those times the Republican leader—the majority leader at the time—chose to fill the parliamentary tree as well, denying and precluding Democrats and others from offering amendments to the bill. This is by far not the first time.

I announced at the very beginning of my tenure as majority leader that I would never fill the tree to preclude amendments. And I am going to hold to that promise. But there are times when in order to move legislation along, filing cloture on a bill is important. I intend to do that again this afternoon. It is unfortunate. But we are going to have to increase the debt limit. The administration has made its case publicly. They have talked to me privately on numerous occasions about the importance of increasing the debt limit.

We can go into all the reasons it is necessary. But in an effort not to at least now politicize the issue, I think it is important for us to get the job done. It is the responsible thing to do.

We are going to take up the debt limit and send it to the House as quickly as possible because time is running out. We are told that we only have a couple of weeks. We have to address this issue in that period of time.

If we fail cloture tomorrow on hate crimes, it will be my intention to move as quickly as possible to the debt limit legislation. That will require procedural cooperation. I am hopeful that we can get procedural cooperation. The Republican leader and I talked today. It would be my hope to get a unanimous consent agreement to take it up. Failing that, of course, we would then have to go through the motion to proceed, and then the bill itself.

INCREASING THE PUBLIC DEBT LIMIT—MOTION TO PROCEED

CLOTURE MOTION

Mr. DASCHLE. Madam President, in an effort to anticipate whatever may come with regard to consideration of the debt limit legislation, I now move to proceed to Calendar No. 407, S. 2578, the debt limit increase and I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move

to bring to a close the debate on the motion to proceed to calendar No. 407, S. 2578, a bill to amend title 31 of the U.S. Code to increase the public debt limit:

Harry Reid, Jack Reed, John Rockefeller, Daniel Inouye, Jon Corzine, Herb Kohl, Zell Miller, Max Cleland, John Breaux, Richard Durbin, Max Baucus, Barbara Boxer, Maria Cantwell, Daniel Akaka, Edward Kennedy and Tom Daschle.

Mr. DASCHLE. Madam President, I now withdraw the motion to proceed.

The PRESIDING OFFICER. The motion is withdrawn.

STAR PRINT—S. 2076

Mr. DASCHLE. Madam President, I ask unanimous consent that S. 2076 be star printed with the changes at the desk.

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

ORDER TO PRINT DISPLAY IN SENATE CHAMBER LOBBY OF INFORMATION REGARDING THE CONSTRUCTION OF THE CAPITOL VISITOR CENTER

Mr. DASCHLE. Madam President, I ask unanimous consent that the Secretary of the Senate be permitted to display, in the Senate Chamber Lobby, information regarding the construction of the Capitol Visitor Center, and that such display and persons designated by the Secretary to answer questions about the display be permitted in the lobby on June 11, 2002, from the hours of 2:15 to 3:30 p.m.

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

ORDERS FOR TUESDAY, JUNE 11, 2002

Mr. DASCHLE. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Tuesday, June 11; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and there be a period of morning business until 10:45 a.m., with Senators permitted to speak for up to 10 minutes each, with the first half of the time under the control of the majority leader or his designee and the second half of the time under the control of the Republican leader or his designee; that at 10:45 a.m., the Senate resume consideration of S. 625, with 60 minutes of debate prior to the vote on cloture on the hate crimes legislation; further, that Senators have until 10:45 a.m. to file second-degree amendments to the hate crimes legislation; that the live quorum with respect to the cloture motion filed earlier today be waived, and that the Senate recess from 12:30 p.m. to 2:15 p.m. for the weekly party conferences.

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

PROGRAM

Mr. DASCHLE. Madam President, the Senate will vote on cloture on the hate crimes legislation, therefore, at approximately 11:45 a.m.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. DASCHLE. Madam President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:42 p.m., adjourned until Tuesday, June 11, 2002, at 9:30 a.m.